

***United States Court of Appeals
for the Second Circuit***



APPENDIX

ORIGINAL

77-1147

B
PFS

United States Court of Appeals

For the Second Circuit.

UNITED STATES OF AMERICA,

Appellee,

v.

RICHARD RIZZO, NICHOLAS BOTTA, LAWRENCE
MESSINA, JOHN YARMOSH, JOHN IANNONE,
IRVING ALBAHARI, JOSEPH FALCO, DAVID
STEINBERG,

Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK.

Joint Appendix of the Government and Appellants,
John Iannone and Irving Albahari.

and Joseph Falco

IRVING ANOLIK

Attorney for Defendants-Appellants

John Iannone and Irving Albahari

225 Broadway

New York, N. Y. 10007

ROBERT B. FISKE, JR.

*United States Attorney for the Southern
District of New York, Attorney
for Appellee*

One St. Andrew's Plaza

New York, N. Y. 10007

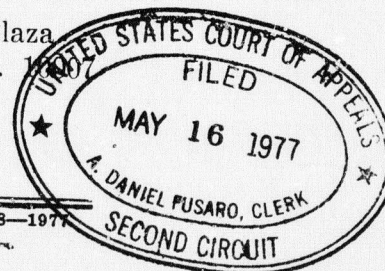
Daniel Cuppan

401 Broadway

New York, NY 10013

THE REPORTER COMPANY, INC., New York, N. Y. 10007-212 732-6978-1977

(1632)



PAGINATION AS IN ORIGINAL COPY

INDEX TO APPENDIX.

	Page
Docket Entries, U.S.A. -v. John Iannone	2a
Docket Entries, U.S.A. v. Irving Albahari . . .	5a
Indictment	8a
Minutes of Suppression Hearing, Dated December 14,	
1976	14a
Minutes of Suppression Hearing, Dated December 20,	
1976	69a

TESTIMONY.

WITNESSES FOR APPELLEE:

Abzug, Michael D.:

Direct	148a
Cross	153a

Bradbury, William, Jr.:

Direct	73a
Cross	99a
Redirect	145a



UNITED STATES COURT OF APPEALS,
FOR THE SECOND CIRCUIT.

- - - - -X

UNITED STATES OF AMERICA,

Appellee,

v.

RICHARD RIZZO, NICHOLAS BOTTA, LAWRENCE MESSINA, JOHN
YARMOSH, JOHN IANNONE, IRVING ALBAHARI, JOSEPH
FALCO, DAVID STEINBERG,

Defendants-Appellants.

On Appeal from the United States District Court for the
Southern District of New York.

- - - - -X

DOCKET ENTRIES, U.S.A. V. JOHN IANNONE.

CRIMINAL DOCKET - U.S. District Court				U.S. vs.		Case Filed Mo. Day		76 1074 06	
PETTY OFFENSE PO OTHER MINOR OFFENSE MO OTHER MISDEMEANOR MIS		JUDGE/MAGISTRATE Assigned 0208 1 0802 Disp./Sentence		IANNONE, JOHN, a/k/a "Kodak"		No. of Defs 11		Yr. Deposit No.	
FELONY Fy: ☒		District Office		(LAST FIRST MIDDLE)		JUVENILE		U.S. MAG. CASE NO.	
U.S. TITLE/SECTION 18:371 18:1955		OFFENSES CHARGED Consp. to conduct illegal gambling business Conducting illegal gambling business		ORIGINAL COUNTS 1 2		18:371 18:1955 Consp. to conduct illegal gambling business Conducting illegal gambling business		1 2	
II. KEY DATES & INTERVALS		SUPERSEDING COUNTS		Disposition of Charges		AMT. ☐ Fugitive ☐ Denied ☐ Set ☐ Pers. Recog. ☐ PSA ☐ \$ 000 conditions Date ☐ 10 + Deposit ☐ ☐ Surety Bond ☐ Bail Not Made ☐ Collateral ☐ ☐ Status Changed (See Docket) ☐ Prty Cust. ☐ Other		SENTENCE	
ARREST or ☒ ☐ INDICTMENT ☒ ☐ ARRAIGNMENT ☐ TRIAL		U.S. Custody Began High Risk Date Summons Served First Appearance		Information 11-22-76 Indict Waived Superseding Indict Info 1-31-77		Trial Set For 12-2-76 1st Plea 12-2-76 Final Plea		Voir Dire Trial Began 2-7-77 Trial Ended 2-14-77	
Search Warrant Issued ☐ Return ☐ Summons Issued ☐ Served ☐ Arrest Warrant Issued ☐ COMPLAINT ☐ OFFENSE (In Complaint)		DATE INITIAL/NO.		INITIAL APPEARANCE DATE ☐ PRELIMINARY EXAMINATION ☐ Date Scheduled ☐ OR ☐ Date Held ☐ ☐ REMOVAL HEARING ☐ WAIVED ☐ NOT WAIVED ☐ INTERVENING INDICTMENT		INITIAL/NO. Type Number		OUTCOME ☐ DISMISSED ☐ HELD FOR GJ OR OTHER PROCEEDING IN THIS DISTRICT ☐ HELD FOR GJ OR OTHER PROCEEDING IN DISTRICT BELOW	

U.S. Attorney or Asst.

Michael D. Abzug
791-1162

ATTORNEYS

Defense ☐ CJA ☐ Ret ☐ Waived ☐ Self ☐ None / Other ☐ PD ☐ SD

SCHULMAN & LAIFER
16 Court. St.,
Brooklyn, N.Y. 11241 UL5-8855

* Show last names and suffix numbers of other defendants on same indictment information **Esposito-01, Rizzo-02, Botta-03, Messina-04**

Yarmosh-05, Albahari-07, Falco-08, Renna-09, Steinberg-10, Maggio-11

DATE	DOCUMENT NO.	PROCEEDINGS	BY
11-22-76		Filed Indictment & Ordered sealed until further Order of the Court.....Cannella, J.	
11-23-76		Indictment Ordered unsealed.....Cannella, J.	
11-24-76		Filed affidavit & Order that indictment 76 Cr. 1074 be unsealed.Cannella, J.	
12-2-76		Deft. (atty. H. Henry Schulman for Stephen R. Leifer (trial counsel), pleads not guilty. R.O.R. Case assigned to Weinfeld, J. for all purposes.....Motley, J.	
12-3-76		Filed Govts. notice of readiness for trial.	
12-3-76		Filed notice of appearance of Schulman & Laifer as Atty. for deft.	

DOCKET ENTRIES, U.S.A. V. JOHN IANNONE

DATE	IV. PROCEEDINGS (continued)	PAGE TWO	V. EXCLUDABLE DELAY				LETTER CODES
			Initial Section (a)	Start Date (b)	End Date (c)	Rate (d)	
12-10-76	Filed defts. affidvt. and order to show cause for an order granting defts. a hearing and suppressing all conversations Rec. 12-14-76.....WEINFELD.J.						A Examination or hearing for mental or physical condition (18 U.S.C. 4244)
12-10-76	Filed defts. affidvt. memorandum of law and OSC why an order should not be granted dismissing ea. ct. of indictment, etc., Rec. 12-14-76.....WEINFELD.J.						B NARA Examination (28 U.S.C. 2902)
12-14-76	Case called- Trial set for Monday 2-7-77 at 10 A.M. in RM 1506WEinfeld,J						C Guilty or Federal trials on other charges
12-20-76	Hearing on defts. motion to suppress begun and continued before Weinfeld.J. Hearing concluded - Court Finds Govt. has made satisfactory explanation for filing & sealing provisions - According motion to suppress made by all defts. is denied...WEINFELD.J.						D Interlocutory Appeals
12-22-76	Fld memorandum of law in behalf of all deft's in support of the application to controvert the orders authorizing interception of oral communications						E Hearings on pretrial motions
12-22-76	Fld Govt's memorandum of law						F Transfers from other districts (per F.R.C.P. Rules 20, 21 & 40)
12-22-76	Fld govt's affid in response to various pre-trial motions which the defts in the above captioned case have made						G Defendant Motion is actually under advisement. Period of 316(h)(1)(G)
12-22-76	Fld ONemo end on OSC fld 12-10-76 In so far as they seek to suppress the electronic surveillance on the grounds that there was a delay in sealing the tapes the motion of deft's Botta & Messina is denied as per oral opinion this date...Weinfeld,J.						H Parole revocation, Deportation, Extradition
12-22-76	Fld OPINION # 45458 in various pre-trial motions; DEft's Iannone & Albharis motions for severance & to strike references to aliases are denied. DEft's Botta & Messina motions on behalf of themselves & all other defts in re wiretapping are denied except to their claims relating to the sealing of the wiretap tapes as to which an evidentiary hearing is required..W infeld,J. M/N						I Prosecution deferred by mutual agreement
1-31-77	Filed Superseding Indictment & referred to Weinfeld,J.Pierce,J.						M Unavailability of defendant or essential witness
2-3-77	Fld order, affid & application of Michael D. Abzug AUSA It is ordered that on 2-3-77, the aforesaid tape recordings shall be unsealed so that they may be used to ensure the accuracy & authenticate duplicate tape recordings that the Govt intends to use at the trial. Upon conclusion the original tape recordings shall be resealed & returned to the custody of the F.B.I... Weinfeld M/N						N Period of mental or physical incompetence of defendant to stand trial
2-8-77	Filed Transcripts of record of proceedings, dated 12-17-76						O Period of NARA commitment or treatment
2-8-77	Filed Transcripts of record of proceedings, dated 12-20-76						P Superseding indictment and/or new charges
	- continued -						R Defendant awaiting trial of co-defendant when no severance has been granted
							S Continuances granted per 316(h)(8) the ends of justice or complexity of case between the defendants (interstate)
							T Time between guilty plea and plea with conviction
							W Grant jury in document was filed per 316(h)

FINE AND RESTITUTION PAYMENTS

DATE	RECEIPT NUMBER	C.D. NUMBER	DATE	RECEIPT NUMBER	C.D. NUMBER

DOCKET ENTRIES, U.S.A. V. JOHN IANNONE

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET

page 2

U.S. vs
IANNONE, JOHN

76 1074 6

Yr. Docket No. Def.

DATE :	PROCEEDINGS (continued) (Document No.)	V. EXCLUDABLE DELAY			
		(a)	(b)	(c)	(d)
2-8-77	Filed affid & order that on 2-4-75 the aforesaid original tape recordings shall be resealrd & held in custody of the FBI pursuant to the 6-24-75 order of Judge Palmieri & the 8-6-75 order of Judge Stewart...Pierce, J. M/N				
02-15-77	Filed Govt's proposed examination of prosecutive jurors.				
02-15-77	Filed Govt's request to charge.				
02-07-77	Trial begun before Weinfeld J. The Court directs the entry of a NOT GUILTY PLEA for deft.				
02-07-77	Trial continued with a jury.				
02-08-77	trial continued				
02-09-77	trial continued				
02-10-77	trial continued				
02-11-77	trial continued				
02-14-77	trial continued and concluded - Jury Verdict: GUILTY as charged (cts. 1 and 2) Sentence adj. to 02-14-77 at 10 AM in Rm 705 Deft. continued ROR Weinfeld, J. P I S ordered				
3-14-77	Govt. oral application to NOLLE this indictment is GrantedWeinfeld, J. (original)				
3-14-77	Filed JUDGMENT & COMMITMENT Deft (atty Stephen Laifer Esq. Present) The deft is hereby committed to the custody of the Atty General or his authorized representative for imprisonment for a period of ONE (1) YEAR & ONE (1) DAY on each on counts 1 & 2 to run conc. with each other. DEft continued on bail pending appeal, Special condition being that the record on Appeal & the Appendix on Appeal & Appellant's Points be filed within THIRTY (30) DAYS from this date. And that the U.S. Atty file Respondent's brief TEN (10) DAYS thereafter....Weinfeld, J... Ent 3-15-77... Issued Copies				
3-22-77	Filed notice of appeal from Judgment ent 3-14-77 (copies mailed to deft & U.S. Atty)				
4-1-77	Filed notice that the original record on appeal has been transmitted & certified to the U.S.C.A.				
4-1-77	Filed transcript of record of proceedings dated <u>1/24/77</u>				
4-1-77	Filed transcript of record of proceedings dated <u>3/14/77</u>				
5-9-77	Filed affid & notice of motion for permission for the deft to travel from the State of N.Y. to the States of Calif. & Nevada etc. ret 5-13-77				

DOCKET ENTRIES, U.S.A. V. IRVING ALBAHARI.

CRIMINAL DOCKET - U.S. District Court		JUDGE/MAGISTRATE Assigned: U.S.		ALBAHARI, IRVING, a/k/a "Brooklyn"		Case Filed Mo. 11 Day 22		76 1074 07	
PETTY OFFENSE PO	0208 1	0802	Dispos./Sentence	U.S.	U.S. MAG. CASE NO.				
OTHER MINOR OFFENSE MO									
OTHER MISDEMEANOR MIS									
FELONY Fel	X			(LAST FIRST MIDDLE)	JUVENILE				

U.S. TITLE/SECTION	OFFENSES CHARGED	ORIGINAL COUNTS	U.S. MAG. CASE NO.
18:371	Consp. to conduct illegal gambling business	1	
18:1955	Conducting illegal gambling business	2	
18:371	Consp. to conduct illegal gambling business	1	
18:1955	Conducting illegal gambling business	2	

II. KEY DATES & INTERVALS

ARREST or	INDICTMENT	ARRAIGNMENT	TRIAL	SENTENCE
U.S. Custody Began	High Risk Date	Information	Trial Set For	Voir Dire
Summons Served	Indict Waived	12-2-76	2-7-77	2-14-77
First Appearance	In Charging District	1-31-77	2-14-77	3-14-77

Superseding Counts: 11

MAGISTRATE		OUTCOME	
Search Warrant Issued	DATE	INITIAL/NO	DISMISSED
Summons Issued	DATE	INITIAL/NO	HELD FOR GJ OR OTHER PROCEEDING IN THIS DISTRICT
Arrest Warrant Issued	DATE	INITIAL/NO	HELD FOR GJ OR OTHER PROCEEDING IN DISTRICT BELOW
COMPLAINT	DATE	INITIAL/NO	
OFFENSE (In Complaint)	DATE	INITIAL/NO	

U.S. Attorney or Ass't

Michael D. Abzug
791-1162

ATTORNEYS

Defense: CJA Ret. Waived. Sent. None / Other: PD, CD

* Show last names and suffix numbers of other defendants on same indictment/information: Esposito-01, Rizzo-02, Botta-03, Messina-04, Yarmosh-05, Iannone-06, Falco-08, Renna-09, Steinberg-10, Maggio-11

DATE	(DOCUMENT NO.)	PROCEEDINGS	EXCLUDABLE DELAY
11-22-76		Filed Indictment & Ordered sealed until further Order of the Court.....Cannella, J.	(a) (b) (c) (d)
11-23-76		Indictment Ordered unsealed.....Cannella, J.	
11-24-76		Filed affidavit & Order that indictment 76 Cr. 1074 be unsealed.Cannella, J.	
12-2-76		Def't. (atty. H. Henry Schulman for Stephen L. Leifer trial counsel), pleads not guilty. R.O.R. Case assigned to Weinfeld, J. for all purposes.....Motley, J.	
12-3-76		Filed Govts. notice of readiness for trial.	
12-10-76		Filed defts. affdvt. and order to show cause for an order granting defts. a hearing and suppressing all conversations Ret. 12-14-76.....WEINFELD, J.	

DOCKET ENTRIES, U.S.A. V. IRVING ALBAHARI

COPY THE APPLICABLE DOCKET ENTRIES FROM SECTION V. ANY OCCURRENCE OF EXCLUDABLE DELAY PER TO SEC. 4, STAT.

DATE	IV. PROCEEDINGS (continued)	PAGE TWO	V. EXCLUDABLE DELAY				LETTER CODES
	DOCUMENT NO.		Start Date (a)	End Date (b)	Code (c)	Days (d)	
12-10-76	Filed defts. affdvt. memorandum of law and OSC why an order should not be granted dismissing et. et. of indictment, etc., Ret. 12-14-76.....WEINFELD.J.						A. Exclusion of trial for... (U.S.C. 434)
12-14-76	Case called- Trial date set for Monday 2-7-77 at 10A.M. in Rm 1506....Weinfeld,J.						
12-20-76	Hearing on defts. motion to suppress begun and continued before Weinfeld.J. Hearing concluded - Court finds Govt. has made satisfactory explanation for filing & sealing provisions - According motion to suppress made by all defts. is denied...WEINFELD.J.						B. NARA... (U.S.C. 2002)
12-22-76	Fld memorandum of law in behalf of alldft's in support of the application to controvert the orders authorizing interception of oral communications						C. Motion... (U.S.C. 2002)
12-22-76	Fld Govt's memorandum of law						D. Interlocutory Appeals
12-22-76	Fld affd in response to various pre-trial motions which the deft's in the above captioned case have made						E. Hearing on pretrial motions
12-22-76	Fld memo end on OSC fld 12-10-76 In so far as they seek to suppress the electronic surveillance on the ground that there was a delay in sealing the tapes The Motion of deft's Botta & Messina is denied as per oral opinion this date..W infeld.J						F. Transfer from other district (F.R.C.P. Rules 20, 21 & 40)
12-22-76	Fld OPINION # 45458 in re pre-trial motions; defts Iannone & Albahris motions for severance & to strike references to aliases are denied. Deft's Botta & Messina motions on behalf of, themselves & all other defts in re wiretapping are denied except to their claims relating to the sealing of the wiretap tapes as to which an evidentiary hearing is required..W infeld,J. M/N						G. Defendant Motion to actually order adjournment period of up to 30 days' exclusion per (F.R.C.P. 11)(G)
1-31-77	Filed Superseding Indictment & referred to Weinfeld, J.Pierce, J.						H. Miscellaneous Proceedings (F.R.C.P. 11)(G)
2-3-77	Fld order, affd & application of Michael D. Abzug AUSA It is ordered that on 2-3-77, the aforesaid tape recordings shall be ubsealed so that they may be used to ensure the accuracy & authenticate duplicate tape recordings that the Govt intends to use at the trial, Upon conclusion the original tape recordings shall be returned to the custody of the F.B.I.,...Weinfeld,J. M/N						I. Prosecution deferred by mutual agreement
2-8-77	Filed Transcript of record of proceedings, dated 12-14-76						J. Unavailability of defendant (F.R.C.P. 11)(G)
2-8-77	Filed Transcript of record of proceedings, dated 12-20-76						K. Admission of defendant to stand trial

-continued-

FINE AND RESTITUTION PAYMENTS					
DATE	RECEIPT NUMBER	C.D. NUMBER	DATE	RECEIPT NUMBER	C.D. NUMBER

DOCKET ENTRIES, U.S.A. V. IRVING ALBAHARI

page 2

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET

U. S. vs

ALBAHARI, IRVING

76 1074

7

Yr. Docket No. Def.

DATE	PROCEEDINGS (continued)	V. EXCLUDABLE DELAY			
		(a)	(b)	(c)	(d)
2-8-77	(Document No.) Fld affid & order that on 2-4-75 the aforesaid original tape recordings shall be resealed & held in the custody of the FBI pursuant to the 6-24-75 order of Judge Palmieri & the 8-6-75 order of Judge Stewart. Pierce, J. M/N				
02-15-77	Filed Govt's proposed examination of prospective jurors.				
02-15-77	Filed Govt's request to charge.				
07-77	Jury trial begun before Weinfeld. J. Court directs entry of N/G plea				
02-08-77	trial continued Out of the presence of jury - Wade hearing begun and concluded Motion denied Weinfeld. J				
02-09-77	trial continued				
02-10-77	trial continued				
02-11-77	trial continued				
02-14-77	trial continued and concluded. JURY VERDICT: Guilty as charged (cts 1 & 2) P S report ordered Sentence adj. to 03-14-77 at 10 AM in Rm 705 - Weinfeld. J Deft continued R O R				
3-14-77	Govt's oral for application for NOLLE PROSEQUI as to Ind. 76 CR 1074 is Granted.. WEinfeld, J.				
3-14-77	Filed JUDGMENT & COMMITMENT Deft (Atty Leonard Eisenberg present) The deft is hereby committed to the custody of the Atty general or his authorized representative for imprisonment for a period of TWO (2) YEARS pursuant to 3651 of T.18 U.S.C. as amended, with provision deft be confined in a JAIL TYPE institution for a period of SIX (6) MONTHS as provided in the aforesaid section on each of counts 1 & 2 to run concurrently with each other. Execution of the remainder of the sentence is suspended. And the deft is placed on probation for a period of TWO (2) YEARS subject to the standing probation order of this Court. Deft continued on bail pending Appeal, Special condition being that the record on Appeal & the Appendix on Appeal & the Appellant's Points be filed within THIRTY (30) DAYS from this date. And that the U.S. Atty file the Respondant's brief TEN (10) DAYS thereafter.....WEinfeld, J...Ent 3-15-77. Issued Copies				
3-25-77	Filed notice of appeal from judgment ent on 3-14-77 (copy to U.S. Atty & Deft's atty)				
4-1-77	Filed notice that the original record on appeal has been transmitted & certified to the U.S.C.A.				
4-1-77	Filed transcript of record of proceedings dated 3/14/77				
4-1-77	Filed transcript of record of proceedings dated 4/26/77				
4-12-77	Filed notice that the 1st supplemental record on appeal has been certified & transmitted to the USCA				
4-12-77	FILED: RETURNED TO SENDER BY REGISTERED MAIL : 2-8-14-77; 3-4-77				
4/13/77	FILED: RETURNED TO SENDER BY REGISTERED MAIL : 1-26-77				

INDICTMENT.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA :

- v - :

RICHARD ESPOSITO, a/k/a "Dixon," :
RICHARD RIZZO, NICHOLAS BOTTA, :
LAWRENCE MESSINA, JOHN YARMOSH, :
JOHN IANNONE, a/k/ "Kodak," :
IRVING ALBAHARI, a/k/a "Brooklyn," :
JOSEPH FALCO, NICHOLAS RENNA, :
DAVID STEINBERG, and LOUIS MAGGIO, :

Defendants. :

INDICTMENT

76 Cr. 1074

-----X
COUNT ONE

The Grand Jury charges:

1. From in or about October, 1974 up to and including in or around November 1975 in the Southern District of New York, and elsewhere, RICHARD ESPOSITO, a/k/a "Dixon," RICHARD RIZZO, NICHOLAS BOTTA, LAWRENCE MESSINA, JOHN YARMOSH, JOHN IANNONE, a/k/a "Kodak," IRVING ALBAHARI, a/k/a "Brooklyn," JOSEPH FALCO, NICHOLAS RENNA, DAVID STEINBERG, and LOUIS MAGGIO, the defendants, and Daniel Kramer, Marie Esposito, Salvatore Landi, Robert Centeno, and Kenneth Davis, named herein as co-conspirators but not as defendants, unlawfully, wilfully, and knowingly, did combine, conspire, confederate and agree, together and with each other and with other persons to the Grand Jury known and unknown, to commit offenses against the United States, to wit, to violate Title 18, United States Code, Section 1955.

INDICTMENT

2. It was part of said conspiracy that said defendants would unlawfully, wilfully and knowingly, conduct, finance, manage, supervise, direct and own an illegal gambling business, to wit, a sports betting business (a) being in violation of the laws of the State of New York, to wit, New York State Penal Law, Sections 225.05 and 225.10, (b) involving five or more persons who conducted, financed, managed, supervised, directed and owned a part of said illegal gambling business, and (c) being and remaining in substantially continuous operation for a period in excess of thirty days or having a gross revenue of two thousand dollars in a single day.

3. Among the means whereby the defendants carried out the conspiracy were the following:

a. The defendant RICHARD ESPOSITO, controlled, managed, directed, and supervised the illegal gambling business (commonly known as the "Dixon" operation) which accepted sports wagers at various locations in New York County, including 2433 Second Avenue, 107 East 125th Street, 251 East 123rd Street, Apartment 3C.

b. Each of these locations, hereinafter referred to as wirerooms, was managed and supervised by the defendant RICHARD ESPOSITO in the manner described below:

(1) Individuals commonly known as "runners," including defendants IRVING ALBAHARI, a/k/a "Brooklyn," LOUIS MAGGIO, and JOHN IANNONE a/k/a "Red," together with individuals not named herein, would transmit sports wagers on behalf

INDICTMENT

of others via telephone to the defendants RICHARD RIZZO, DAVID STEINBERG, and co-conspirators Danny Kramer, Salvatore Landi and Kenneth Davis, who worked in the wireroom on a weekly basis; the aforementioned defendant-runners, together and with others not named herein, would receive their "figures" or "pay and collects" from the wireroom, that is, an accounting of how much their bettors won or lost during the week. These "figures" or "pay and collects" enabled the defendant-runners to collect losses from and pay winnings to the individual bettors on whose behalf they had transmitted wagers to the wireroom.

(2) The money owed to the "Dixon" operation at the end of the week would be collected from the defendants IRVING ALBAHARI, a/k/a "Brooklyn," JOHN IANNONE, a/k/a "Kodak," LOUIS MAGGIO and others known and unknown to the Grand Jury by the defendant RICHARD ESPOSITO or Salvatore Landi, named herein as a co-conspirator but not as a defendant. Similarly, the money owed by the "Dixon" operation at the end of the week would be paid to the defendants IRVING ALBAHARI, a/k/a "Brooklyn," JOHN IANNONE, a/k/a "Kodak," LOUIS MAGGIO and others known and unknown to the Grand Jury by the defendant RICHARD ESPOSITO or Salvatore Landi, named herein as a co-conspirator but not as a defendant.

c. From time to time information concerning current odds on sports events (commonly known as the "line") would be transmitted to the "Dixon" operation's wire-room from wirerooms of other unlawful gambling operations. In addition, the aforementioned wirerooms assisted each other in the operation at the illegal gambling businesses by "laying off," that is, by placing and receiving large wagers with each other so that no single wireroom would be exposed to a large loss. These other wirerooms operated in the Southern District of New York and elsewhere in the following manner:

INDICTMENT

(1) The defendants NICHOLAS BOTTA, LARRY MESSINA, and JOHN YARMOSH, together and with others not named herein, worked in a wireroom belonging to the "Mr. White" unlawful sports gambling business. The defendants NICHOLAS BOTTA, LARRY MESSINA, JOHN YARMOSH, together with others not named herein would record and tally sports wagers received at the wireroom via telephone from the co-conspirator Danny Kramer and other unidentified runners, as well as accept the "Dixon" operation's "laid-off" sports wagers. The defendants NICHOLAS BOTTA and JOHN YARMOSH would also collect money owed to the "Mr. White" operation by the co-conspirator Danny Kramer as well as other unidentified runners who had transmitted wagers to the "Mr. White" wireroom. Similarly, the defendants NICHOLAS BOTTA and JOHN YARMOSH would also pay money owed by the "Mr. White" operation by the co-conspirator Danny Kramer as well as other unidentified runners who transmitted wagers to the "Mr. White" wireroom.

(2) The defendant JOSEPH FALCO, with others not named herein, worked in a wireroom belonging to the "National" operation. JOSEPH FALCO would record and tally the "Dixon" operation's "laid-off" sports wagers.

(3) The defendant NICHOLAS RENNA, with others not named herein, worked in a wireroom belonging to the "Commander 1" operation. NICHOLAS RENNA would record and tally the "Dixon" operation's "laid-off" sports wagers.

OVERT ACTS.

In furtherance of said conspiracy and to effect the objects thereof, the defendants committed and caused to be committed, among others, the following overt acts in the Southern District of New York;

1. On June 13, 1976, at approximately 5:05 p.m., the defendant RICHARD ESPOSITO had a telephone conversation with defendant RICHARD RIZZO.

INDICTMENT

2. On June 13, 1975, at approximately 1:43 p.m., the defendant DAVID STEINBERG had a telephone conversation with the defendant RICHARD RIZZO.

3. On June 14, 1975, at approximately 12:15 p.m., the defendant JOSEPH FALCO had a telephone conversation with the defendant RICHARD RIZZO.

4. On June 15, 1975, at approximately 2:01 p.m., the defendant IRVING ALBAHARI, had a telephone conversation with the defendant RICHARD RIZZO.

5. On July 15, 1975, at approximately 5:21 p.m., the defendant JOHN IANNONE had a telephone conversation with the defendant RICHARD RIZZO.

6. On July 17, 1975 at approximately 7:45 p.m., the defendants NICHOLAS BOTA and LAWRENCE MESSINA had a telephone conversation with co-conspirator Daniel Kramer.

7. On July 23, 1975, at approximately 12:33 p.m., the defendant NICHOLAS RENNA had a telephone conversation with the defendant RICHARD RIZZO.

8. On July 23, 1975 at approximately 11:55 p.m., the defendant LOUIS MAGGIO had a telephone conversation with defendant RICHARD RIZZO.

9. On November 2, 1975, the defendants NICHOLAS BOTTA and LAWRENCE MESSINA had a telephone conversation with co-conspirator Daniel Kramer.

10. On November 13, 1975, the defendant JOHN YARMOSH had a telephone conversation with co-conspirator Daniel Kramer.

11. On November 13, 1975, co-conspirator Daniel Kramer went to the Mikado Restaurant, 21 West 39th Street, New York, New York

(Title 18, United States Code, Section 371)

INDICTMENT

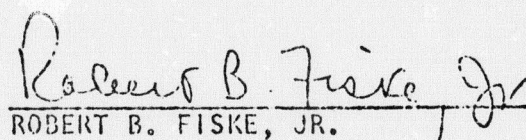
COUNT TWO

The Grand Jury further charges:

From on or about October 1, 1974, up to and including on or about November 30, 1975, in the Southern District of New York, and elsewhere, RICHARD ESPOSITO, a/k/a "Dixon," RICHARD RIZZO, NICHOLAS DOTTA, LAWRENCE MESSINA, JOHN YARMOSH, JOHN IANNONE, a/k/a "Kodak," IRVING ALBAHARI, a/k/a "Brooklyn," JOSEPH FALCO, NICHOLAS RENNA, DAVID STEINBERG, and LOUIS MAGGIO, the defendants, and others known and unknown to the Grand Jury, unlawfully, wilfully, and knowingly, did conduct, finance, manage, supervise, direct and own an illegal gambling business, to wit, a sports betting business, (a) being in violation of the laws of the State of New York, to wit, New York State Penal Law, Sections 225.05 and 225.20, (b) involving five or more persons who conduct, manage, supervise, direct or own a part of said illegal gambling business, and (c) remaining in substantially continuous operation for a period in excess of thirty days or having a gross revenue of two thousand dollars in a single day.

(Title 18, United States Code, Section 1955 and 2)

FOREMAN


ROBERT B. FISKE, JR.
United States Attorney

MINUTES OF SUPPRESSION HEARING, DATED DECEMBER 14, 1976.

cms

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK



UNITED STATES OF AMERICA,

vs.

76 Cr. 1074

RICHARD ESPOSITO, a/k/a "DIXON",
RICHARD RIZZO, DAVID STEINBERG,
NICHOLAS BOTTA, LAWRENCE MESSINA,
JOHN YARMOSH, JOHN IANNONE, a/k/a
'KODAK' IRVING ALBAHARI, a/k/a
"BROOKLYN, JOSEPH FALCO,
NICHOLAS RENNA, LOUIS MAGGIO,

Defendants.

Before:

HON. EDWARD WEINFELD,

District Judge.

New York, December 14, 1976;

4.15 o'clock p.m.

(Room 2703)

APPEARANCES:

ROBERT B. FISKE, JR., Esq.,

United States Attorney for the
Southern District of New York;

BY: MICHAEL D. ABZUG, Esq.,

Assistant United States Attorney.

EDWARD PANZER, Esq.,

Attorney for Defendant
Richard Esposito.

JOEL WINOGRAD, Esq.,

Attorney for Defendants
Richard Rizzo and David Steinberg.

1 cms

2 MARVIN KORNBERG, Esq.,

Attorney for Defendant
Nicholas Botta.

3
4 RONALD RUBENSTEIN, Esq.,

Attorney for Lawrence Messina.

5 LAWRENCE SPIRN, Esq.,

Attorney for Defendant
John Yarmosh.

6
7 STEPHEN LAIFER, Esq.,

Attorney for Defendants
John Iannone and Irving Slbahari.

8
9 DANIEL CRUPAIN, Esq.,

Attorney for Defendant
Joseph Falco.

10
11 FRANK LOPEZ, Esq.,

Attorney for Defendant
Nicholas Renna.

12
13 ROBERT ELLIS, Esq.,

Attorney for Defendant
Louis Maggio.

14
15
16 ---

17
18 (Open court.)

19 THE CLERK: The United States of America
20 versus Richard Esposito, et al.

21 Are counsel ready for the motions?

22 MR. ABZUG: Ready for the Government, your
23 Honor.

24 THE COURT: Which motion shall we hear first?
25 The wiretap motion?

cms

3

Who wants to be heard on that?

MR. KORNBERG: Your Honor, if it please the Court --

THE COURT: State your name for the record.

MR. KORNBERG: My name is Martin Kornberg. I am the attorney for Nicholas Botta.

May we, with the Court's permission, divide the wiretap motion into two parts? One part having --

THE COURT: You can divide it into three parts. It will be like all gaul.

MR. KORNBERG: Your Honor, we have prepared it and we have all worked together on this, and certain attorneys have prepared certain aspects of this. I don't want to carry into a brother attorney's area of --

THE COURT: Suit yourself.

MR. KORNBERG: Judge, I would like to confine my argument to the question of the need for the wiretap order in this particular case. And in that regard the moving papers, the affidavit of the United States Attorney, sets forth the fact that there were three informants at the time.

Informant A, informant B and informant C.

In the wiretap affidavit it sets forth the fact that informant A had been a runner in the Sonenshine

1 cms

4

2 organization, and he defines as a person who is one who
3 accepts bets in the street who in turn phones the bets
4 in to the clerks in different offices.

5 Individual B is a bettor. Individual C is
6 a bettor.

7 Now, it is submitted to the Court that after
8 having received information from A that he is in fact a
9 runner with in the organization and who gives the names of
10 the other clerks and the other houses involved in this
11 particular indictment, and the individuals involved in
12 those particular situations. Together with the fact
13 that they have individuals who have made bets to the various
14 runners.

15 It is submitted that based upon their testimony
16 alone an indictment could have been handed up charging
17 these defendants with the very salient crimes for which
18 they are charged pursuant to the wiretap order.

19 THE COURT: Well, Mr. Kornberg, doesn't the
20 affidavit also state that each of the informants advised
21 the investigators that he would not testify for fear of
22 his life and personal safety?

23 MR. KORNBERG: Your Honor, the statute, as I
24 understand it, provides that -- it does not give the United
25 States Attorney an excuse to do away with normal investigat-

1 ive procedure on the grounds that he won't have a witness
2 later on. The statute says that if you can complete
3 a normal investigate procedure, which he could have done
4 by way of these particular individuals, it does not give
5 him an excuse later on to say that I need the wiretap
6 because they won't testify at trial. And we have the
7 exact wording of the statute -- if I may read it to the
8 Court -- in Mr. Lopez' memorandum.
9

10 "A full and complete statement as to whether --"

11 THE COURT: What section?

12 MR. KORNBERG: (Continuing):

13 "-- other investigative procedures have been
14 tried and failed, or why they reasonably appear
15 unlikely to succeed if tried or to be too dangerous."

16 They're talking about the investigative
17 procedures, not proving the Government's case beyond a
18 reasonable doubt.

19 Judge, we have to go on. Assuming the
20 Government has these witnesses, as I say, they could have
21 gotten this particular indictment. Another excuse as to
22 why normal investigative procedures were not used in
23 this particular case is because they say that Bradberry
24 has decided after his three and a half, or thirty oper-
25 ations that he has been on, that in his opinion the Govern-

1 cms

6

2 ment could not obtain a conviction and does not obtain
3 convictions in gambling cases without the use of eaves-
4 dropping equipment, which is absolutely preposterous.

5 There are numerous cases in this court and in
6 the State Courts in which search warrants are obtained in
7 which convictions are had without the use of wiretaps,
8 and with regard to your Honor's statement would these
9 witnesses testify if it is too dangerous, I submit to the
10 Court that being on the inside they don't have to testify.
11 Their statements and their affidavits could have been used
12 to obtain the search warrant.

13 THE COURT: Well, of course their argument
14 then is that it is not an unusual thing for those on the
15 inside who are operating the gambling business to destroy
16 records, demolish matters, and that is a matter of common
17 knowledge. I don't need anybody to submit an affidavit for
18 me on that.

19 MR. KORNBERG: Your Honor, I submit this to
20 the Court:

21 They are on the inside, the runner is Mr. A.
22 He has got the records.

23 THE COURT: Yes, but the records are on the
24 inside, too. The people who are operating it. And a
25 lot of those records have gone down the toilet drain, you

1 cms

7

2 know that as well as I do.

3 MR. KORNBERG: Your Honor, there are times
4 the records have gone down the toilet, there are times the
5 Court issues a search warrant and a know-not warrant, and
6 I submit, your Honor, that the people, or, the Government
7 would have to prove in some way that there is a belief
8 but in this particular case they are using flash paper,
9 which I am sure the Court knows. It would constitute a
10 crime in and of itself.

11 THE COURT: What is flash paper? This is a
12 new one now. I get educated in every case I try.

13 MR. KORNBERG: Flash paper, your Honor, is a
14 type of paper which has been used by bookmakers or gamblers
15 in the past, which ignites very rapidly and is disposed
16 of --

17 THE COURT: You sound like the expert.
18 You are helping out the Government here.

19 MR. ABZUG: Fortunately we are well aware of
20 it, your Honor.

21 MR. KORNBERG: Judge, if the affidavit is
22 sufficient on its face to sustain a wiretap order, then
23 that affidavit would be sufficient on its face to sustain
24 a search warrant.

25 Now, if it is sufficient to sustain a search

cms

8

warrant the argument that the records are subject to being destroyed should be the basis for a hearing by the Court to determine what if anything other than perhaps agent's speculation in this case would cause him to believe that he could not get a conviction without the necessity of the wiretap. Because there have been convictions without the necessity of a wiretap.

Judge, also with respect to the affidavit of Mr. Abzug, his affidavit sets forth a set of facts and his affidavit makes a request for one thing. It makes a request for an order asking for a tap, or an interception of conversations emanating from certain telephones. He in no way asks for relief in his affidavit for intercepting incoming telephone calls.

Nevertheless, the order that was prepared by the United States Attorney's office calls for an order both requiring interception of telephone conversations both to and from the numbers involved in this particular case.

I submit that is improper. I submit further, Judge, that after the first wiretap order in which the named individuals were taped in which there were conversations involving the five named, or the four named individuals set forth in that particular wiretap order, there was no

cms

9

need for a subsequent order.

According to the U. S. Attorney there were \$479,000 bet over a period -- I think that's the figure, I may be wrong on the exact figure -- over four days of conversations. And the order was to terminate when the objective was reached. And I submit the objective in the initial order was reached after getting the names of the individuals, getting them on tape and getting four hundred some-odd thousand dollars of bets.

I submit that there was no need for the second order. If the first order is held to be proper. If the first order is held to be improper, then that which they obtained as a result of the first order cannot be used as the basis for the second order in this particular case.

Judge, there is also, as I stated to the Court, the question with respect to the sealing in this particular case.

THE COURT: The what?

MR. KORNBERG: The sealing of the tapes after they were obtained. And if I may ask my colleague, he will go into that portion.

MR. RUBENSTEIN: Good after, your Honor.

Ronald Rubenstein.

1 cms

10

2 Your Honor, I think the papers spell out the
3 issue presented under Title 18, Section 2518-(a)(8) and
4 that the Government in their response affidavit provides
5 that the Government contends in the eighth paragraph that
6 an evidentiary hearing will show that there is a satis-
7 factory explanation for the delay in the sealing of the
8 original tape recordings.

9 THE COURT: The Government has suggested
10 an evidentiary hearing, but do you dispute the facts that
11 are set forth in the Government's brief as to the circum-
12 stances under which there was a delay in each instance?

13 First as far as Judge Palmieri is concerned,
14 and then as far as Judge Carter is concerned?

15 MR. RUBENSTEIN: Well, Judge, I just received
16 a copy of the Government's brief from Mr. Abzug this
17 afternoon, and if I could have a few moments to peruse
18 it --

19 THE COURT: Gee, that's a fancy word this hour
20 of the afternoon.

21 MR. RUBENSTEIN: I haven't done much up to now.

22 THE COURT: If you say, just look at it.

23 MR. RUBENSTEIN: Your Honor, after conferring
24 with co-colleagues, or, co-counsel, we dispute, yes, what
25 the Government suggests.

1 THE COURT: All right, then, that aspect of
2 the motion will have to be set down for hearing. Indeed,
3 Government counsel suggested that a hearing may be required.
4 I asked the question because if there was no issue of fact
5 and you accepted his statement, the matter could be decided
6 on paper. But you are entitled to a hearing, and I will
7 fix a time for a hearing.
8

9 MR. RUBENSTEIN: I would say in addition, too,
10 your Honor, I note in his affidavit that he doesn't address
11 himself at all to the second set of tapes from the order
12 of Judge Carter and he doesn't suggest anywhere that there
13 was any reason --

14 THE COURT: Well, those are the tapes that
15 were delivered to Judge Stewart.

16 MR. RUBENSTEIN: Right. Those were the tapes
17 that were delivered to Judge Stewart.

18 THE COURT: Well, if you plan to submit another
19 brief you might direct your attention to a circumstance
20 where a judge who signed the order is outside the juris-
21 diction and away on vacation, or, if as sometimes can
22 happen, a judge signed an order and is dead at the time
23 the tapes are being completed.

24 MR. RUBENSTEIN: I'm aware of the -- I think
25 the proper pronounciation is the Poetta case which seems

1 cms

12

2 to address itself to that particular situation, but
3 I am not aware of any exact situation that would lead us
4 to that conclusion at this time.

5 THE COURT: All right.

6 We will set that down for hearing. There is
7 no problem about that.

8 MR. RUBENSTEIN: All right, fine.

9 Your Honor said you are setting down the
10 issues --

11 THE COURT: No, just with respect to the situ-
12 ation as far as the filing of Judge Palmieri is concerned,
13 and the non-filing with Judge Carter, the judge who signed
14 the second order.

15 MR. RUBENSTEIN: We are alleging, your Honor,
16 there is a sealing --

17 THE COURT: All right, let's --

18 MR. RUBENSTEIN: And there was a delay of eight
19 days, as to my calculation, as to each particular order
20 which is beyond the period of time suggested in Gigante
21 and, therefore, the Government must now come forward and
22 show there was a satisfactory explanation as to why it
23 was not sealed immediately.

24 I think the Government's own affidavit concedes
25 that the immediacy requirement of 2518(a)(8) was not met

1 cms

2 on either of those sealing orders. And therefore --

3 THE COURT: How long do you think that hearing
4 would take, gentlemen?

5 MR. ABZUG: Your Honor, in my judgment the
6 hearing would take no more than about three hours. Two
7 to three hours. The witnesses that I anticipate will
8 be called will be Special Agent Bradberry of the FBI, who
9 is the case agent responsible for the maintenance of the
10 original tape recordings, and myself.

11 THE COURT: I just want the time.

12 MR. ABZUG: I am saying a stipulation as to
13 chain of custody on the tapes which I believe all the
14 attorneys have tentatively agreed to. If I don't get
15 a stipulation on chain of custody and the tapes, the hearing
16 may be a great deal lengthier. Perhaps even up to two
17 days.

18 THE COURT: Go ahead.

19 MR. RUBENSTEIN: Well, I think, your Honor,
20 we have covered the issues. And Mr. Lopez wants to add
21 a few points, your Honor.

22 MR. LOPEZ: Yes, your Honor, if I may. Just
23 two small points.

24 Your Honor has indicated earlier in the form
25 of a question, or, in the form of a statement, that the

cms

14

witnesses in this case, or the informants in this investigation that the Government had were not prepared to testify, or to testify at trial and, therefore, that posed a problem. They were in fear of possibly harm coming to them.

I thought that that matter that your Honor would consider was disposed of in United States versus Zigarelli, which is a Third Circuit case, and went to the Supreme Court, and cert. was denied, as I recall.

In that matter Mr. Zigarelli was considered an organized crime figure and was invited before a grand jury, after being offered the proper immunity, to testify. He indicated to the District Court that he was unprepared to testify because of the fact that his life would be on jeopardy and that he would be in danger if he gave any testimony whatsoever.

The Third Circuit found that was no basis for him not to testify either before the grand jury or at a trial. His attorney then appealed to the Supreme Court of the United States who, as I recall, your Honor, denied certiorari.

So the fact that the Government alleges in this matter, your Honor, that their witnesses would not testify at trial is partly a ground for asking for an

1 cms

15

2 extraordinary remedy such as the one that was --

3 THE COURT: Well, I understand that Mr.
4 Zigarelli was granted immunity from prosecution.

5 MR. LOPEZ: Yes, your Honor.

6 THE COURT: Which required in exchange that
7 he give his testimony. This is a volunteer witness.

8 MR. LOPEZ: Well, I wasn't sure if --

9 THE COURT: On its face there is a difference.

10 MR. LOPEZ: Your Honor, another thing that
11 troubles me, another matter that troubles me is of course
12 when under Title 18, Section 2518(a)(8) the order of the
13 sealing is required. As I recall the section that
14 immediately upon the expiration of the period of the order
15 such recording shall be made available to the judge issu-
16 ing such order and sealed under his direction.

17 Now we had a curious situation with respect
18 to the first order which is dated June 11, 1975. We
19 learned from the affidavit of the second order that there
3 20 were no interceptions after June 15th, 1975, because the
21 gambling operation allegedly changed their telephone
22 service.

23 So now the question that comes to mind --
24 well, did the obligation to seal to grow on June 15, 1975,
25 or did it accrue, or was it necessary for the Government

1 cms

16

2 to move on it upon termination of the order as the statute
3 quite frankly indicates?

4 My feeling is that the Congressional intent
5 of this matter was to protect the integrity of the tapes.
6 And once the Government knew that the termination of the
7 order actually and de facto terminated on June 15th, I
8 think that their obligation of the time begins to run as
9 of that date. That's what I feel, your Honor, in
10 fairness, and I think that is what satisfies the
11 Congressional intent. Otherwise, of course, the period
12 of calculation of the sealing as far as the first order
13 is concerned I think is one or two days, your Honor.
14 And of course we draw a different picture from that.

15 But that's the only thing that would concern
16 me, and of course which I feel that perhaps your Honor
17 might care to elucidate upon. I feel that the respons-
18 ibility for sealing grows when the Government knows that
19 it's in effect de facto. Its order has actually
20 terminted. Although it still has time to run as in fact
21 the first order had.

22 Thank you very much, your Honor.

23 MR. RUBENSTEIN: Your Honor, if I could be
24 heard on Mr. Lopez' last point.

25 This Circuit, Judge Kaufman in adopting the

1

cms

17

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

dissent in Falcone, Falcone was that situation where the effect of the order had terminated prior to the date that the order would have naturally ended, and they ran the date from the period that they actually stopped eavesdropping rather than from the termination of the particular order.

THE COURT: All right, I will hear from the Government now on this.

MR. ABZUG: Your Honr, with respect to the point that was just raised by Mr. Lopez on the date at which the sealing requirement is incumbent upon the Government, it is the Government's position with respect to the first order that the statute -- well, the statute clearly reads that the obligation to immediately seal the tape only runs from the termination of the order.

Now one of the terms of Judge Palmieri's order, which was signed on June 11, you will note that the order was terminated after twenty days, or when the investigative objectives are met. And I would submit that the Congressional intent of 2518(a)(8) that Mr. Lopez mentions has really nothing to do with the question of when the order was actually terminated. And it is the Government's position that the order was not terminated until there was a termination by the Government that based on

1 cms

18

2 the facts that were apparent to the Government, that the
3 investigative objectives of this particular wire could
4 not be met.

5 THE COURT: What is the date you fix?

6 MR. ABZUG: The date that the Government fixes
7 is June 23rd, 1975 for the following reasons, your Honor,
8 and may I just be permitted to state some facts?

9 The order was signed on June 11. On that day --

10 THE COURT: That was a 20-day order.

11 MR. ABZUG: Correct. On that day the Govern-
12 ment began interception. Interception continued from
13 the 11th to the 20th. And during that period of time
14 a number of relevant calls were intercepted.

15 On June 16th the wire went dead. That is
16 that no conversations whatever were being intecepted.
17 Same thing with June 17. On June 17 surveillances
18 established that the wire room clerks in this operation,
19 people who were known as Richie, last name unknown, and
20 Kenny, last name unknown, moved from the place where
21 the --

22 THE COURT: The Second Avenue place.

23 MR. ABZUG: Right, from the Second Avenue
24 Place over to 251 123rd Street. Okay.

25 Now, in order, in my judgment, your Honor, and
this is why I am going to have to testify, in order to

1 cms

19

2 insure that two things didn't occur, or, in order to
3 insure that the move was permanent and that they weren't
4 going to go from 123rd back to the Second Avenue address,
5 I instructed the FBI to establish surveillance over the
6 new address, and the surveillance was established from
7 June 17th up to June 23rd.

8 The reason for those surveillances was two-
9 fold:

10 First of all to insure that we would
11 prematurely and interception pursuant to Judge Palmieri's
12 order and, second of all, if in fact the move was
13 established to be permanent the surveillances would have
14 the effect of establishing new probable cause for going
15 in on the new wire room.

16 On June 23rd, in my judgment I --

17 THE COURT: In other words, you you came to a
18 judgment that the effective date was June 23rd.

19 MR. ABZUG: Correct.

20 THE COURT: You wanted to be sure that they
21 weren't going back to the old place.

22 MR. ABZUG: Precisely, your Honor. And on
23 that day I concluded that the investigative objectives
24 of Judge Palmieri's order could no longer be met.

25 I filed a 10-day report with Judge Palmieri,

1 cms

2 or, I offered to file a 10-day report with Judge Palmieri
3 on June 23rd in which I said that basically the wire was
4 dead, and on that date Judge Palmieri was not available.

5 I was advised by his law clerk. And we in fact offered the
6 tapes for sealing and the 10-day report, making that available
7 on June 24th. Thus under our construction of when the

8 order would be terminated there would only be one day
9 attributable to the unexpected absence of Judge Palmieri.

10 With respect to the other items mentioned by
11 Mr. Kornberg which have to do with the affidavits of
12 this facial sufficiency, Mr. Kornberg claims the affidavits
13 are insufficient because they fail to set forth that
14 investigative alternatives were not available. And the
15 Government contends that the affidavits, especially in
16 light of a case such as this in which Minello, which is
17 cited at page 13 of our brief, stated the difficulty of
18 procuring reliable evidence through conventional
19 investigative means are self-evident, was clearly
20 sufficient.

21 Now, the information set forth in both the affidavi
22 that is the affidavit of Mr. Bradberry signed on June 11th
23 and the affidavit signed on July 10th clearly set forth
24 no reasons why other investigative alternatives aren't
25 available than the affidavit which was cited in United

cms

versus Steinberg which is cited at page 13 of our brief.
That is a Second Circuit case.

There the Second Circuit held that an affidavit which merely set forth that no -- this was in a narcotics case -- that no incriminating records would be available and that the affiant was unable to secure anybody to infiltrate the unlawful organization was in substantial compliance with the statutory requirement, and held in that case that the affidavit would be sufficient.

In our case we have, I would submit, much more information than was present in the Steinberg affidavit.

Turning to the affidavits themselves, on June 11th, on page 17 of the affidavit, there really is quite a large volume of reasons set forth why other investigative means aren't available. Mr. Bradberry in his affidavit set forth that surveillances wouldn't be sufficient because the gambling operation is conducted in a covert manner over a telephone. He also couldn't overheard, he obviously wouldn't be in a position in physical surveillance to overhear the conversations. He set forth the reasons why the records wouldn't be -- seizure of records wouldn't be sufficient.

As your Honor noted, records are often

cms

22

1 destroyed in the course of searches, and even if they
2 are seized they are often undecipherable because of the
3 codes that are used. And I just want to make a
4 parenthetical comment. The statute says that other
5 means reasonably appear to be unavailable, or reasonably
6 appear not to be -- not to be too dangerous. There is no
7 requirement of absolute certainty here so that Mr.
8 Kornberg's conjecture over the possible success of the
9 search, or perhaps maybe the records that might be sized
10 would be totally decipherable is really besides the point.
11 Because Mr. Bradberry was saying it was reasonably possible
12 based on his experience that the records would be in code,
13 that they would be destroyed.

14 Similarly I think the suggestion, the only
15 suggestion really of other investigative means in this
16 case was that the informant might testify, and I think the
17 statement in the affidavit there is sufficient, that this
18 suggestion really is illusory. Because as your Honor
19 noted the informants were afraid and would not testify.
20 And I don't think it has ever been held in any case that
21 I --

22
23 THE COURT: How about the case that Mr. Lopez
24 referred to.

25 MR. ABZUG: That case is wholly distinguishable

1 cms

23

2 because it is a situation where a witness was was refusing
3 to testify before, as I understand the case, having read
4 it, where a witness was refusing to testify before a grand
5 jury which is wholly distinguishable from our situation.

6 The point is whether at the time that this
7 electronic surveillance application was applied for did it
8 appear reasonably apparent that this witness would -- that
9 this informant would testify. And it was apparent to
10 Bradberry after speaking to Mr. A, Mr. B and Mr. C that
11 they would not testify.

12 Even leaving that aside, certainly these
13 informants are described in rather low echelon positions
14 of the organization. They are merely bettors and
15 runners, and I think that the issuing Court could have
16 easily found based on their low position in the operation
17 that they would not be familiar with all the aspects of
18 the operation which a wiretap would reveal.

19 With respect to the July 10th affidavit, I think
20 again the statement of Mr. Bradberry in that connection is
21 sufficient. Again Mr. Bradberry details the facts that
22 the searches and surveillances would be insufficient, and
23 the fact that the electronic surveillance to that date was
24 surprisingly foreshortened, it only lasted for five days
25 and it is apparent from the affidavit that it was not

1 cms

24

2 sufficient to reveal the full nature and scope of the
3 operation.

4 For example, the wire room clerks, Richie,
5 last name unknown, who we subsequently identified as
6 Richard Rizzo, and Kenny, last name unknown, who we subse-
7 quently after the second wire identified as Kenny Davis,
8 were unknown, were still unknown at the time of the applica-
9 tion for the second wire, therefore two rather significant
10 members.

11 The prior electronic surveillance up to that
12 date failed to reveal the identity of two rather significant
13 members of this operation.

14 Secondly it is apparent from the facts set
15 forth in the affidavit that the operation had branched
16 out substantially.

17 Not only was there one wire room to be
18 investigated, but one of the wire room clerks who was
19 formerly working on what I will call the old wire room on
20 Second Avenue had apparently branched out on his own, this
21 is Danny Kramer, and established a new wire room.

22 So an electronic surveillance was necessary
23 to establish what if any relationship Mr. Kramer had with
24 the old wire room and who Mr. Kramer was associated with.

25 With respect to Kornberg's contention that the

cms

25

1
2 order is insufficient because the affidavit only applied
3 for conversations emanating from one of the wire rooms,
4 I suggest that that is not persuasive in light of United
5 States versus Corfaro, which is a Third Circuit case, your
6 Honor, but nevertheless very instructive I would submit.

7 There the Third Circuit considered an order
8 which authorized the interception of a wire communication
9 from Mr. Corfaro and other unknowns from telephone
10 facilities, and concluded that while it only specified
11 that conversations were to be intercepted from telephone
12 facilities, it also when read reasonably authorized
13 incoming as well as outgoing telephone calls.

14 In any event, I would suggest that Mr.
15 Kornberg's focus on one portion of the affidavit is
16 improper since the affidavit, according to Tortella should
17 be construed as a whole, and there are a number of factors
18 in the affidavit itself which indicate that the Government
19 is really applying for authorization to intercept conversa-
20 tions --

21 THE COURT: Why is the Government so careless
22 in drawing its orders? It's just as easy to say incoming
23 and outgoing calls.

24 MR. ABZUG: Well, I agree with your Honor, and
25 in ~~oer~~ portion of the affidavit it actually is specified

1 cms

26

2 that it is going to be --

3 THE COURT: All you are saying is that the
4 affidavit should be read as a whole. All right.

5 MR. ABZUG: That's correct.

6 THE COURT: Anything else?

7 MR. ABZUG: No, your Honor.

8 THE COURT: All right.

9 I will reserve decision on this motion.

10 Now, with respect to this hearing. Depending
11 on how my case moves along, I don't know whether I will
12 hear you either Monday morning or Tuesday morning. I am
13 alerting you now. So you will all be ready. And as
14 soon as I have a clearer idea, which will probably be
15 tomorrow or Thursday, Mr. Gragnano, the clerk of the Court,
16 will call you, and would it be all right to call one
17 lawyer and can he alert the others, or do you each want
18 separate telephone calls?

19 MR. RUBENSTEIN: I will be bound by what Mr.
20 Kornberg receives, or vice versa, but I wouldn't want to
21 be responsible for anybody else.

22 THE COURT: Well, you will undertake, the
23 Assistant will undertake to notify all the lawyers.

24 MR. ABZUG: Yes, your Honor.

25 MR. LAIFER: Excuse me, your Honor. I'm on

1 cms

27

2 trial now.

3 THE COURT: Well, I am going ahead with this
4 hearing on Monday or Tuesday morning. I am ready
5 and --

6 MR. LAIFER: Can I ask Mr. Lopez or Mr.
7 Winograd or one of these other fine gentleman to stand in
8 for me?

9 THE COURT: You are all interested in the same
10 setup. You can make an arrangement, can't you?

11 MR. LAIFER: Yes, sir.

12 THE COURT: And while you are here I am going
13 to suggest a date --

14 MR. LAIFER: Sir, I also made certain motions
15 before your Honor

16 THE COURT: I will hear all the motions.
17 I am going to hear them now.

18 MR. LAIFER: They are fairly pro forma.

19 THE COURT: The wiretap motion we heard.
20 What is the next motion?

21 MR. LAIFER: Your Honor, if I may, sir, I will
22 be brief. It is late.

23 I made the usual 6(d) motion relative to
24 Strike Force attorneys being in the grand jury, just to
25 preserve the record, should the Supreme Court --

cms

28

THE COURT: You made that to protect your record.

That motion is denied.

MR. LAIFER: Yes, sir.

THE COURT: Now, what is your next motion?

MR. LAIFER: Under Rule 14, and this is, of course, more in point, my dear friend Mr. Winograd and I each represent two defendants in this case. That will be point two.

I represent Mr. Albahari and Mr. Iannone. Mr. Winograd represents Mr. Rizzo and Mr. Steinberg.

My clients are alleged to be runners, half-sheet writers, who phone bets, allegedly, to Mr. Winograd's clients.

Judge, I have gone over these papers. In all candor I can --

THE COURT: Pardon me a minute. I can't find your papers here.

MR. LAIFER: I filed them, Judge.

MR. ABZUG: I have a copy if you wish.

THE COURT: All right, go ahead.

MR. LAIFER: Yes, sir.

In all candor, your Honor, Mr. --

THE COURT: I always assume lawyers talk with

1 cms

2 with candor.

3 MR. LAIFER: I don't know why I always say
4 that. It must be a Freudian slip.

5 But, in any event, sir, Mr. Winograd's clients
6 are the most necessary witnesses to prove the innocence both
7 of Mr. Albahari and Mr. Iannone. For the simple reason,
8 sir, that Mr. Albahari is not "Brooklyn" as stated in the
9 indictment, and Mr. Iannone is not the alias, forget what-
10 ever it is --

11 MR. ABZUG: Kodak.

12 MR. LAIFER: Kodak, the one allegedly given to
13 him, and there is another application as far as aliases
14 are concerned.

15 THE COURT: Who are the two clients represented
16 by Mr. Winograd? Steinberg and Rizzo?

17 MR. WINOGRAD: That's correct, your Honor.

18 MR. LAIFER: Yes, sir. They are allegedly
19 the office people. And who are better witnesses to show
20 that my clients are not in fact other --

21 THE COURT: Have you any information that they
22 are prepared to give up their Fifth Amendment rights?

23 MR. LAIFER: No, they are not. I have spoken
24 to Mr. Winograd about this, who is an excellent attorney.

25 MR. WINOGRAD: Your Honor, what Mr. Laifer has

1 cms

2 done is he has spoken to me last week with respect to my
3 clients being witnesses for Mr. Laifer's two clients on
4 the joint trial period. I indicated to Mr. Laifer
5 after speaking to my clients that at the present time my
6 inclination is not to have them testify at a joint trial
7 with the other two people. However, should they be called
8 as witnesses at some time subsequent to their trial by the
9 other people, then they would exercise whatever rights
10 they had at that particular time. But they would not
11 testify at a joint trial with Mr. Laifer's clients and
12 where they are named as defendants.

13 MR. LAIFER: My clients are allegedly calling
14 in kets and meeting with these people. Allegedly.
15 I say to you, Judge, that I will prove at trial that
16 Albahari, Iannone are not who the Government say they are.
17 I don't care what any informant says.

18 THE COURT: You will prove what?

19 MR. LAIFER: I will p4ove that Iannone and
20 Albahari are not the individuals alleged as set forth in
21 this indictment. They are in court right now. I had
22 them come in so they will both say they want the same
23 lawyer. They are both here. I will be able to
24 partially prove that they are not "Brooklyn" and "Kodak"
25 as alleged by the Government.

1 cms

31

2 But, in order to do it substantially I will
3 need Mr. Winograd's two clients. This is not done as
4 a ruse to get a severance. It's done as a material and
5 necessary part of the defense of two men charged with a
6 felony.

7 Now, there is no way I can call Mr. Winograd's
8 clients, and without them, Judge, frankly my clients cannot
9 get a full and fair trial.

10 THE COURT: All right.

11 MR. LAIFER: I do not this motion as a pro forma
12 motion as far as th is aspect is concerned. As far as
13 the first point was under 6(d), Judge, you will see, and
14 I will be willing in camera so that we do not lose any
15 surprise we would have in the defense, to show your Honor
16 where there is merit, where they have frankly the wrong
17 people.

18 I can do that for you in camera. And I would
19 be willing to do it.

20 THE COURT: Government?

21 MR. ABZUG: Your Honor, may it please the Court,
22 with respect to the arguments raised by Mr. Laifer, the
23 Government submits they have no merit for the following
24 reasons:

25 First of all, there has been no specific claim

cms

32

1 as to what Mr. Steinberg and what Mr. Rizzo would testify
2 to, even assuming that they were to testify at a separate
3 trial. And I believe that the cases state, at page 15
4 of my brief, they require some sort of showing beyond
5 merely saying it is necessary to prove their innocence.
6 That in fact the co-defendants can provide exculpatory
7 testimony. And I don't believe that standard has been
8 met yet.
9

10 I think more importantly, or equally as important,
11 as discussed in United States versus Finkelstein, to the
12 recent Second Circuit case at page 15 of our brief, there
13 is no indication that the co-defendants, if even they were
14 called at a second trial, would waive their rights and
15 testify.

16 Now Mr. Winograd has indicated if they were
17 called at a second trial they would exercise whatever
18 rights they have. I don't know exactly what that
19 means. I suspect --

20 THE COURT: I know what it means. He is
21 being a cautious lawyer. He is making no commitment of
22 any kind.

23 Is that correct, Mr. Winograd?

24 MR. WINOGRAD: Your Honor, that is, but I will
25 say this: If they were called at a trial subsequent to

1 cms

33

2 the trial in which they are defendants, and if there
3 were no Fifth Amendment right at that time, then they
4 would testify on behalf --

5 THE COURT: What would they testify to?

6 MR. WINOGRAD: Well, your Honor, I'm not
7 prepared to say that in open court. If your Honor wishes
8 that in camera I would be glad to give it to him.

9 MR. LAIFER: If I may, they would no longer
10 be in jeopardy, of course, and I don't think frankly they
11 would have any remaining Fifth Amendment rights. They
12 would either be acquitted or convicted.

13 THE COURT: I'm not sure. There may be
14 other charges that they are subject to.

15 MR. LAIFER: Perhaps, sir. But, in any event,
16 your Honor, I would be willing to make a showing to your
17 Honor in camera that this argument is not the stereotype --

18 THE COURT: Well, I have the papers in front
19 of me and I will go by what is in the papers.

20 MR. LAIFER: I would just urge upon your Honor
21 that I can make an in camera showing as to the manifest
22 need of this.

23 Now, the third point, your Honor, is as to
24 7(d) of rules. Striking the aliases as to my clients,
25 and one other defendant who has been given an alias in

1 cms

34

2 this case.

3 Mr. Esposito is allegedly known as Dixon.
4 My clients are known as Brooklyn and Kodak. That is,
5 Albahari and Iannone each are separately designated under
6 those names.

7 I would urge this on your Honor. Your Honor
8 is well aware that at least three times during the course
9 of a criminal trial in the Federal Court the indictment
10 is read to the jury. While it is no evidence of any
11 kind, your Honor in all probability will read the indict-
12 ment to the jury to give them so idea of what it is about,
13 and the Government certainly would do that in its opening
14 and --

15 THE COURT: Well, were those names referred
16 to at any time during the course of the wiretaps?

17 MR. LAIFER: They are used exclusively in the
18 wiretaps. That's exactly the point.

19 THE COURT: Well, it's a different situation
20 then, isn't it, than the ordinary course where the alias
21 is inserted in an indictment?

22 MR. LAIFER: Most respectfully, Judge, I think
23 whether or not my --

24 THE COURT: Well, there are cases that hold
25 that.

1 cms

35

2 MR. LAIFER: Yes, sir, there are cases.

3 Your Honor has my memorandum of law that this is a situation
4 where perhaps the entire determination by the jury is going
5 to be whether or not Albahari and Iannone are Brooklyn and
6 Kodak. That it should not appear in a document that
7 is going to be read to them at least three times. That's
8 something that should come from the proof.

9 THE COURT: Why is it going to be read to them
10 three times?

11 MR. LAIFER: Well, your Honor will read the
12 indictment to the jury when they are selected so they will
13 have an idea as to what the case is about.

14 Am I correct, sir.

15 THE COURT: I usually read the indictment.

16 MR. LAIFER: Yes, sir. And sometimes even
17 in the charge the Court again reads the indictment to the
18 jury. So that's two times.

19 THE COURT: No, I said I read in the charge.

20 MR. LAIFER: In the charge. And some judges
21 do it also initially before the trial starts.

22 THE COURT: I don't.

23 MR. LAIFER: All right, so that's one time.

24 The Government does it a couple of times.

25 MR. ABZUG: I don't.

cms

36

1
2 THE COURT: They are not going to do it a
3 couple of times.

4 MR. LAIFER: They will do it at least once.

5 MR. ABZUG: No, you have my representation I
6 won't.

7 THE COURT: No, there is no need to do it.

8 MR. LAIFER: Well, Judge, once is enough,
9 perhaps. I'm doing from four to one, Judge. But one
10 perhaps is enough. Shouldn't that in all fairness,
11 Judge -- you in your robes, with your black robes and your
12 high office, sir, reading the names, also known as Dixon,
13 also known as Kodak -- in any event, sir, you reading that,
14 isn't that a determination for the jury to make whether or
15 not they would be Dixon or Kodak? Isn't that something
16 that should not be included in the indictment?

17 Let them prove it, if they can. I'm going
18 to prove they are not with your Honor's help in my in
19 camera hearing, but I am going to prove that they are
20 not.

21 Now, why should that be in the indictment,
22 a judge reading, Irving Albahari also known as Brooklyn?
23 It gives the inference that Albahari is Brooklyn. That's
24 the whole basis for the indictment.

25 THE COURT: All right. Suppose I hear the

1 cms

37

2 other side.

3 MR. ABZUG: Well, the indictment is not
4 evidence, obviously, and this isn't the situation where
5 the Government has put in inherently prejudicial or
6 scurrilous material into an indictment. As your Honor
7 noted there are a number of cases which hold that where
8 the alias is part of the Government's proof, and moreover
9 when the witnesses, the Government witnesses only know
10 the defendants by their aliases that it is proper to put
11 an alias in the indictment. And that is the situation,
12 your Honor.

13 So I would submit that it's distinguishable
14 from Dioguardi cited at page 15 of our brief and, there-
15 fore, proper.

16 THE COURT: All right.

17 What other motions do we have?

18 MR. LAIFER: I would ask your Honor about
19 United States versus Ewens, Judge Waterman's case in the
20 Second Circuit, that the Government be ordered to produce
21 before your Honor the grand jury minutes to determine
22 whether or not it was based upon any illegally obtained
23 evidence.

24 THE COURT: Do you know how far I denied motions
25 for grand jury minutes? In United States against Costello

1 cms

38

2 at the District Court level. And it was Judge Learned
3 Hand, I think, in the Garson case who said that he never
4 expected such a motion to be granted. That motion is
5 denied.

6 MR. LAIFER: Well, hope springs eternal, your
7 Honor.

8 THE COURT: Upon the authority of the United
9 States against Costello, I don't know the citation, it is
10 my own case. And that is the one that went to the
11 Supreme Court. I didn't try the case, Judge McGohey
12 tried it.

13 MR. LAIFER: Thank you for your attention,
14 Judge.

15 THE COURT: Now, what else do we have?

16 MR. WINOGRAD: Your Honor, there was a motion
17 for some particulars and discovery and inspection. However,
18 Mr. Abzug has complied with the important requests, and
19 that is, one, the pictures that your Honor ordered that he
20 turn over.

21 THE COURT: Which items are you agreed on and
22 what is open, that is what I want to know?

23 MR. WINOGRAD: With respect to the Item No. 1,
24 the Government has not answered that particular.

25 "State the dates the Government contends that

cms

39

all of the defendants joined the conspiracy
alleged in Count 1 of the indictment."

They just give the dates from October of 1975 --
or October 1974 to November of 1975.

I would like to know specific dates that my
client, as well as the other defendants, allegedly joined
this conspiracy.

In view of the fact the Government alleges
there are four separate operations, even though we are
saying these are possibly another conspiracy. I think
that is very important to help us in defending this
particular case, your Honor. And I don't think it is
too incumbent on the Government, or too much work for them
to give us those specific dates when each of these defend-
ants allegedly joined the conspiracy.

THE COURT: What else is open?

MR. WINOGRAD: They may have given us the list
of the other persons to the grand jury known who are
alleged co-conspirators.

THE COURT: Given the items that are open.
You say Item 1 is open.

MR. WINOGRAD: Item 1 is open. Item 2 is
open. Item 5 is open. 1, 2 and 5.

THE COURT: Let me hear the Government now.

cms

40

MR. ABZUG: Well, with respect to Items 1 and 2, your Honor decided a case entitled United States versus Simon in which it was held that the defendants are not entitled to have the Government specify times and places in which they entered the conspiracy. So on the basis of that, your Honor, which is still good law --

THE COURT: I thought you were going to cite my other case, United States against Kahane that went into it more thoroughly.

MR. ABZUG: I rely on Simon, your Honor. I think that is adequate.

With respect to the demand No. 5, this is basically a renewal of the motion that was made before your Honor when we last met on Thursday, December 9th. I think your Honor was satisfied with the Government's response then.

The Government's contention is that each defendant in this case knew or recently should have known the full nature and extent of this conspiracy. And I don't think that we are required to specify in United States versus Politi, which was decided by Judge Lasker, the precise relation of each co-conspirator to the other one.

Even the way that the demands are framed

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

cms

41

really misconstrues the Government's proof in this case.
And it is really impossible for me to respond to the way
they are framed.

MR. WINOGRAD: Your Honor, this is with respect
to those different operations that were mentioned, the
White National --

THE COURT: I remember that.

MR. WINOGRAD: I think it becomes important.
Because even though the Government says these are four
separate operations, it is our position after reviewing
the potential evidence in this case that there are
basically more than one conspiracy. And the only way
we could prove it to the Court is by having the names
of the members, the five members that the Government relies
upon who either managed, supervised or controlled each
of these operations.

Now, your Honor, we feel that there is a spill-
over effect here, and very frankly if the Government gives
us these names we will show there was more than one con-
spiracy in this case.

THE COURT: All right, I'm prepared to decide
this matter now.

MR. KORNBERG: Your Honor, there is one applica-
tion we made in our motion --

1
2 THE COURT: Let me finish one at a time.

3 MR. KORNBERG: I'm sorry.

4 THE COURT: This is a motion made by the
5 defendants Steinberg and Rizzo for a bill of particulars.
6 Counsel have indicated upon the record those matters as
7 to which they have come to an agreement, and the only items
8 that remain open are Items 1 and 2.

7 9 As to these it is clear that the defendants
10 seek to uncover evidentiary particulars with respect to
11 the formation, duration of the conspiracy, participation
12 of the movements in the conspiracy, and the dates upon
13 which individual participation ended.

14 It has been stated any number of times that the
15 Government's proof in conspiracy cases essentially rests
16 upon circumstantial evidence and the inferences be drawn
17 by the fact finders from established facts. Accordingly
18 the motion is denied under the authority of the United
19 States v. Kahane, 203 Fed. Supp. 78, S.D. New York, 1962.

20 As to the Items 5 and 5-D, here the defendants
21 seek to have the Government specify the exact membership
22 of each of the five -- is it four or five betting oper-
23 ations -- of the betting operations referred to in the
24 complaint.

25 The complaint, in the Court's view, together

1 cms

43

2 with the information revealed in the Government's
3 affidavit, provides the defendants with enough facts
4 concerning the operation of these various wire rooms to
5 enable them to know what they are charged with and to
6 defend against those charges.

7 To require the Government to specify the exact
8 involvement of each defendant with each of the wire rooms
9 referred to in the indictment would unnecessarily limit
10 its proof and would require revelation of evidentiary
11 details that the defendants are not entitled to. See
12 United States against Politi, 334 F. Supp. 1318, 1321,
13 S.D. New York, 1971. Also Kahane, already referred to
14 above.

15 Disposition is made accordingly.

16 Now, what else did you have?

17 MR. KORNBERG: Yes.

18 Your Honor, I would dare say from a reading of
19 all the Government's affidavits that the entire case, the
20 Government's entire case, is based on the wiretap evidence.
21 We have received this afternoon Mr. Abzug's affidavit in
22 which he states in response to defendants' demand set
23 forth in Paragraph 11, the Government intends to subpoena
24 voice exemplars from the defendants, but does not expect
25 to introduce voice print evidence. Now, under those --

1 cms

44

2 THE COURT: Does not intend to --

3 MR. KORNBERG: To introduce voice print
4 evidence.5 Now, under those circumstances there must be,
6 since we are dealing with a situation in which code names
7 have apparently been used, the question of identification
8 of the various witnesses, or the various defendants in
9 this particular case.10 We also have a situation where we were told
11 that photographs have been taken by the United States
12 Attorney's office, or the FBI, and they are available for
13 us to see.14 A question now arises as to the question of
15 identification between the voices on the telephone and
16 the individual defendants which the United States Govern-
17 ment does not intend to show by way of voice prints.18 Under those circumstances we would ask that
19 your Honor grant to the defendants a hearing to deter-
20 mine the propriety of the identification, as to whether
21 or not it's coming from photos or how the various witnesses
22 are going to identify Mr. White or Mr. Dixon or Mr.
23 Brooklyn or Mr. Kodak as being these particular individuals
24 in this particular trial.

25 MR. ABZUG: Well, with respect to whether a

1 cms

45

2 a hearing is necessary to determine the method of making
3 voice identifications in this case, your Honor, I
4 recently became aware of a case which I am sorry I did not
5 cite in my brief, but it is entitled United States versus
6 Albergo, a Second Circuit case decided on June 17, 1976,
7 in which the defendants there advanced the same contention
8 that Mr. Kornberg is making here, that is that some sort
9 of hearing should have been held in order to determine
10 whether the voice identification procedures were unduly
11 suggestive, analogizing it to the line of questions begin-
12 ning with Stoval versus Denno.

13 In this case, a Second Circuit case, the Second
14 Circuit said that to grant such procedure would be to
15 make a mockery out of Rule 901 which, as your Honor knows,
16 is the rule pertaining to opinion evidence. Testimony
17 as to the quality of somebody's voice, and whether it is
18 the same as it is on the tape is, after all, merely
19 opinion evidence. And the Second Circuit held there
20 that really what Mr. Kornberg is, or, what the defendant
21 whose position Mr. Kornberg is adopting is waiving, is not
22 a question of constitutional portent protected by
23 due process, but one rather that he should make more
24 appropriately to the jury.

25 So on the basis of that I don't believe that a

1 cms

46

2 hearing is necessary.

3 THE COURT: What do you plan to do with this
4 voice exemplar? Not introduce it?

5 MR. ABZUG: We will introduce it, your Honor.

6 THE COURT: How will the jury make a determination?
7 The jury is the ultimate fact finder.

8 MR. ABZUG: That is correct, your Honor.

9 THE COURT: What did you mean by that statement
10 that he was there?

11 MR. ABZUG: As I understood what the defendants
12 were asking, what they wanted to know was whether there
13 was going to be some sort of a scientific test.
14 They wanted to discover whether anything but scientific
15 tests were going to be introduced. Voice printing being
16 one of them, as I understand.

17 I have never dealt with voice prints before,
18 but as I understand it is a method by which electronic
19 vibrations emitted by one voice can be compared to
20 that on a tape, and they compare that and they see that
21 the vibrations are the same and they say as a matter of
22 scientific proof that that voice is the same.

23 We are not planning to do anything like that
24 What we are planning to do is introduce opinion testimony
25 of various individuals that the tapes which we plan to

1 cms

47

2 introduce in fact are those of the defendants, and
3 corroborated by introducing into evidence voice exemplars.
4 That is, mere exemplars which --

5 THE COURT: That is the defendants who are
6 allegedly on the wiretap.

7 MR. ABZUG: Correct, your Honor.

8 THE COURT: Exemplars of their voice.

9 MR. ABZUG: Correct, your Honor.

10 MR. LAIFER: Your Honor, I recently was on a
11 case and the exemplars were taken prior to the trial.
12 And in that case the Government had the defendants read
13 the Constitution of the United States, the preamble, and
14 it became, of course -- I don't recall whether or not it
15 was ever used in the grand jury that the agents said they
16 listened to those exemplars and it resulted in the indict-
17 ments. But I will urge this on the Court, on behalf
18 of my two clients, I was going to do it anyway because of
19 what I stated to your Honor before, I have no objection to
20 it on behalf of my two clients. Of course other lawyers
21 may disagree. I can tell your Honor that Judge Mishler
22 permitted it in the case just tried --

23 THE COURT: Voice exemplars?

24 MR. LAIFER: Yes, sir.

25 THE COURT: I wouldn't think there is any ques-

1 cms

48

2 tion about it. Just as you have a right to require a
3 defendanet to give his fingerprints or his handwriting as
4 a known specimen. What is the difference?

5 MR. LAIFER: Correct. I would only ask this,
6 Judge, that guidelines be set. I would object to the
7 Government having my clients read "285 for a dollar" or
8 \$3 on this horse or that horse."

8 9 THE COURT: Well, I'm not going to make a
10 determination now. It would seem to me that there would
11 be a very definite purpose in asking a witness whose
12 exemplar is being obtained to duplicate the very matter
13 that is in issue. What do you do in the case of a
14 forgery? You have a fellow keep on writing and writing
15 various items one way or the other.

16 Now, you are not directing the Court at this
17 point anything like that. I will listen to your argu-
18 ment, but the --

19 MR. LAIFER: No, I was asking your Honor --

20 THE COURT: What do you do in case of a claimed
21 forgery? You ask a fellow usually, you break it down
22 in letter of the name and eventually, sooner or later, you
23 ask him to write the name in full. Isn't this the same
24 thing?

25 MR. ABZUG: And that procedure, if I may say so,

cms

49

your Honor, has been approved in United States versus --

THE COURT: Well, this is the first I hear of it. It seems to be a common sense approach to it.

MR. ABZUG: Not only common sense, but constitutional, your Honor. It's well approved procedure.

THE COURT: All right.

Is there anything else now?

MR. WINOGRAD: Setting of the trial date.

THE COURT: Well, I want to get an idea. What is your time estimate, Mr. Abzug?

MR. ABZUG: I would say, your Honor, if all defendants go to trial, that the maximum would be about three and a half weeks. That is the maximum.

THE COURT: Does that accord with the defendants' viewpoint?

MR. LAIFER: Mr. Abzug said five weeks the other day.

THE COURT: Well, sometimes time estimates are notoriously inaccurate both ways. Well, I'm going to fix a date now, gentlemen, and ask you to make yourselves ready and available to go to trial.

MR. LAIFER: Excuse me, your Honor. Would it be possible to get a February date? I do have two trials lined up in January that were set a long time ago.

1 cms

2 As a matter of fact, in one of them there is man writted
3 in already. He is in MCC writted in from Atlanta.

4 THE COURT: I was going to put it down for
5 January 17. What is wrong with that date?

6 MR. LAIFER: I'm on trial, your Honor. There
7 is a man that has been writted in already from Atlanta
8 that's here now.

9 THE COURT: When does his case go to trial?

10 MR. LAIFER: It's going to go to trial January
11 3rd, your Honor.

12 THE COURT: How long will it last?

13 MR. LAIFER: It's going to take some time, your
14 Honor.

15 THE COURT: Mr. Panzer, what is your problem?
16 You always have a problem.

17
18 MR. PANZER: I'm supposed to go to trial on
19 January 25th. That's supposed to go four weeks.

20 THE COURT: If it is going to be that kind of
21 a setup I am saying now other counsel will have to come
22 into the case. Because if this starts he has a three-
23 week trial, you have a four-week trial, I am sure --

24 MR. WINOGRAD: January 10, your Honor, I am
25 beginning a three-week trial.

1 cms

51

2 MR. LAIFER: That's why February, sir.

3 Could we have the latter part of February,
4 perhaps?

5 THE COURT: No. No.

6 What is your problem?

7 MR. LOPEZ: I have a problem, your Honor.

8 I am starting a case in which the people of the State of
9 New York are paying approximately \$5000 a week for their
10 witnesses, and --

11 THE COURT: You don't mean they are paying for
12 the witnesses, do you?

13 MR. LOPEZ: Yes, Judge, for their upkeep.

14 THE WITNESS: Maintaining the witnesses.

15 MR. LOPEZ: Yes, sir. That is People versus
16 LeGrand, Reverend LeGrand. And that case is due to start
17 January 4th, and it will last for about four weeks, your
18 Honor.

19 THE COURT: All right. I will tell you what
20 I am going to do. I am going to take into account all
21 your engagements. I am fixing a date different from
22 the one I planned originally, which was consistent with
23 my own problems here. Originally I planned to set this
24 down for January 17. I am going to put this down to
25 start the first Monday in February, February 7, and there

1 cms

2 will be no excuses.

3 If any lawyers find they are engaged, or they
4 are likely to be engaged, they are under the orders of the
5 Court to arrange for other counsel to represent the
6 defendants. Get other counsel within a reasonable time
7 before so that there won't be any application for adjourn-
8 ment. And I assume that the case will go forward as
9 to all defendants. February 7.

10 MR. SPIRN: Your Honor, my name is Lawrence F.
11 Spirn. I have put in a notice effective about an hour
12 ago for Mr. Yarmosh.

13 Now, I was retained as of this morning.
14 Obviously I have not had an opportunity to put in any
15 motions. I wonder if the purpose of the hearing that
16 your Honor has scheduled for Monday whether I might be
17 permitted to join in that hearing in lieu of papers --

18 THE COURT: You can participate in the hearing,
19 of course.

20 MR. SPIRN: And may I have a period of a week
21 to get in any additional papers which I might have after
22 I review the case?

23 THE COURT: Well, did Yarmosh have a lawyer
24 before?

25 MR. SPIRN: No, sir. He had been speaking,

cms

53

with an attorney, no attorney had ever appeared.

THE COURT: What motions do you plan to make?

MR. SPIRN: I have not reviewed the case enough. I would have to the motions of co-counsel. Perhaps the Court would permit me to adopt them, if they are appropriate to my client.

THE COURT: Now, as I say, you get word as to when I will hear you, whether it will be Monday or Tuesday on this hearing.

You have this gentleman's name, too?

MR. ABZUG: Yes, your Honor, Mr. Spirin.

THE COURT: And he will have until Tuesday to make any motions. You may make your motions returnable by order to show cause Tuesday afternoon at 2.15.

MR. SPIRN: Thank you, Judge.

THE COURT: We will take a five-minute recess, then we will resume immediately thereafter.

(Recess.)

THE COURT: Now, the other matters that are on this afternoon concern representation of two defendants, that is Rizzo and Steinberg, by one lawyer, Joel Winograd, and also the representation by Stephen R. Laifer of two other defendants. In addition, going over the papers I see that Marving M. Kornberg, who represents the defendant

1 cms

54

2 Botta, and Ronald Rubenstein who represents the defendant
3 Messina, have a --

4 MR. KORNBERG: We have two different offices,
5 your Honor, two different room numbers. It makes it
6 easier for both of us.

7 THE COURT: You are ready to go forward in the
8 case of Rizzo and Steinberg. Are they here?

9 MR. WINOGRAD: Yes, your Honor.

10 THE COURT: I think this aspect of the case
11 should be heard in chambers.

12 MR. WINOGRAD: Fine.

13 THE COURT: And I also think that there is
14 no occasion for the prosecution to be present.

15 MR. ABZUG: Very well, your Honor.

16 Your Honor, I just would like to make one
17 statement for the record. Perhaps I should make it in
18 chambers.

19 THE COURT: Unless you know something.

20 MR. ABZUG: No, I don't.

21 THE COURT: I was going to say if you have any
22 information to be brought to my attention which would make
23 it inadvisable, to use a very mild term, for one lawyer to
24 represent two defendants that you should call to the Court's
25 attention.

cms

55

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. ABZUG: Yes, I do, your Honor.

THE COURT: Well, I think that should be done in chambers, too, and from that point I will proceed.

MR. WINOGRAD: Yes, your Honor.

THE COURT: So supposing the defendnats Rizzo and Steinberg come forward, and we will go intot he robing room and discuss the matter there and the lawyers will be there, and of course the prosecution will. And if the point comes when he should not be, I will ask him to leave the room.

MR. RUBENSTEIN: Your Honor, I guess the rest of us are excused?

THE COURT: No, no. There are defendants Albahari and Iannone.

MR. KORNBERG: Those are my clients.

THE COURT: Keep them here, too.

MR. RUBENSTEIN: All other people are excused, your Honor?

THE COURT: Yes.

(Robing conference ordered sealed by the Court.)

MINUTES OF SUPPRESSION HEARING, DATED DECEMBER 20, 1976.

2 UNITED STATES DISTRICT COURT

3 SOUTHERN DISTRICT OF NEW YORK

4 -----x
5 UNITED STATES OF AMERICA, :

6 Plaintiff, :

7 -against- : 76 Cr. 1074

8 RICHARD ESPOSITO, et al., :

9 Defendants. :

10 -----x
11 BEFORE:

12 HON. EDWARD WEINFELD,

13 District Judge

14 New York, New York

15 December 20, 1976 - 10:10 a.m.

16 APPEARANCES:

17 ROBERT B. FISKE, JR.,

United States Attorney

Southern District of New York

18 BY: MICHAEL D. ABZUG, ESQ.,

BARBARA AMBLER, ESQ.,

19 Special Attorneys

New York Joint Strike Force

20 EDWARD PANZER, ESQ.,

21 Attorney for Richard Esposito

22 HARVEY GREENBERG, ESQ.,

23 Attorney for Richard Rizzo

24 MARVIN KORNBERG, ESQ.,

25 Attorney for Michael Botta

rmrf

2

APPEARANCES (Continued):

RONALD RUBENSTEIN, ESQ.,
Attorney for Lawrence Messina

HAROLD BAER, JR., ESQ.,
Attorneys for Harold Yarmosh

STEPHEN LAIFER, ESQ.,
Attorney for John Iannone

LEONARD EISENBERG, ESQ.,
Attorney for Irving Albahari

DANIEL CRUPAIN, ESQ.,
Attorney for Joseph Falco

FRANK LOPEZ, ESQ.,
Attorney for Nicholas Renna

JOEL WINOGRAD, ESQ.,
Attorney for David Steinberg

ROBERT ELLIS, ESQ.,
Attorney for Louis Maggio

- - -

MR. LOPEZ: The defendants are ready, your Honor,
and Mr. Esposito is represented by Mr. Panzer and he will be
delayed, but in the interim, I will undertake to represent
Mr. Panzer.

THE COURT: The interests of all defendants
are common as far as this motion is concerned. There
can't possibly be any conflict.

MR. LOPEZ: That is correct, your Honor.

rmrf

3

1
2 THE COURT: Also, the attorney representing one
3 of the defendants was to come in --

4 MR. WINOGRAD: That is Mr. Rizzo, your Honor.
5 We were here last on Friday --

6 THE COURT: He was to come in with his new lawyer.

7 MR. WINOGRAD: He is here.

8 THE COURT: Where is the new lawyer? Is he
9 hiding his light under a bushel?

10 MR. GREENBERG: Harvey L. Greenberg, 950 Third
11 Avenue, New York City.

12 THE COURT: You represent the Defendant Rizzo?

13 MR. GREENBERG: Yes, sir.

14 THE COURT: You understand that the Court
15 requested there be separate, individual counsel representing
16 the two defendants originally represented by Mr. Winograd?

17 MR. BAER: Your Honor, we represent John Yarmosh,
18 who was represented heretofore by a Larry Spirn.

19 THE COURT: You now represent the Defendant Yarmosh?

20 MR. BAER: Correct.

21 MR. ABZUG: Before the Government calls its
22 first witness, the Government moves, pursuant to your order
23 signed December 17th and filed today, to unseal the
24 following documents which the Government feels are relative
25 to this hearing. The copy of Judge Palmieri's order filed

rmrf

4

June 11, 1975, authorizing electronic surveillance, copy of Judge Carter's order signed July 10, 1975, authorizing the interception of electronic communications, a ten-day report signed by Judge Palmieri on June 24, 1975; an application and sealing order signed by Judge Palmieri on June 24, 1975, and an application and unsealing order signed by Judge Stewart on August 6, 1975.

I offer these up, your Honor.

THE COURT: Motions granted.

MR. ABZUG: The Government calls as its first witness William Bradbury.

W I L L I A M B R A D B U R Y, J R.,

called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. ABZUG:

Q Mr. Bradbury, are you currently employed?

A Yes, sir.

Q Where, sir?

A With the Federal Bureau of Investigation here in New York City.

Q In what division?

A The Organized Crime Division.

Q How long have you been employed in the Organized

1 rmrf Bradbury-direct 5

2 Crime Division in the Manhattan office?

3 A Approximately five years.

4 Q During that five-year period have you participated
5 in investigations into alleged violations of federal laws
6 prohibiting syndicated gambling?

7 A Yes, I have.

8 Q Could you tell the Court approximately how many
9 of those investigations you participated in?

10 A Approximately 35 to 40.

11 MR. ABZUG: Please mark this Government's
12 Exhibit 1 for identification.

13 (Government's Exhibit 1 marked for
14 identification.)

15 Q Showing you what has been marked for identification
16 only as Government's Exhibit 1 for identification, have
17 you seen that document before?

18 A Yes, sir.

19 Q Could you describe the document generally?

20 A Yes. It is an order authorizing electronic --
21 the interception of electronic wire communications over
22 telephone numbers 860-0702 and 860-0704.

23 Q When was that order signed?

24 A June 11, 1975.

25 Q By whom?

rmrf

Bradbury-direct

6

1
2 A I believe it is Judge Palmieri.

3 MR. ABZUG: At this time the Government, subject
4 to the objections of the defendants, moves to admit into
5 evidence what has been marked for identification as
6 Government's Exhibit 1.

7 THE COURT: Any objection?

8 MR. KORNBERG: No objection.

9 MR. LOPEZ: No objection.

10 (Government's Exhibit 1 received in
11 evidence.)

12 Q Did you participate in the execution of Government's
13 Exhibit 1?

14 A Yes.

15 Q In what capacity?

16 A I was the supervising case agent.

17 Q To your knowledge, do you know when electronic
18 surveillance began pursuant to this order?

19 A On June 11, 1975.

20 Q What was the period of surveillance authorized
21 by this order?

22 A 20 days, or whenever the Government proved its
23 case or had reached the necessary --

24 MR. KORNBERG: I object to that, your Honor.
25 I think the order speaks for itself and it is not with

rmrf

Bradbury-direct

7

respect to when the Government proved its case.

THE COURT: Overruled.

Q Did interception of communications continue for the full 20-day period authorized by Judge Palmieri's order?

A No, it didn't.

Q When, to your knowledge, did wire communications over the target telephones cease?

A June 15, 1975.

Q Would you please describe to this Court the monitoring procedure that was utilized during the five-day period of interception, that is, from June 11th to June 15th?

A Yes, sir. Two special agents were assigned to monitor each telephone number and maintain custody of the original tapes as they were on the machine themselves.

Q When were these special agents monitoring?

A Only after our surveillance, physical surveillance, had placed either Richard Esposito, Arthur Sonneschein, Alex Nichas, Danny Cramer or Richie knew the address where those telephone numbers were located.

Q How would this fact, assuming it occurred, be communicated to the monitoring agents?

A By radio, through radio contact with the surveilling units.

rmrf

Bradbury-direct

8

Q Where was the monitoring -- where did it take place?

A In the FBI office in Manhattan.

Q Prior to June 15th, was there any indication that wire communications over the target telephones might cease at least temporarily?

A Yes. On June 14th there were intercepted oral communications from Richie Rizzo, who was the clerk at that time, giving out the new -- giving out a telephone number to call in order to get the new telephone numbers for the gambling operation. He advised that the operation was going to move beginning Monday morning, be in a new location.

Q Did you yourself do any acts upon reception of these telephone calls?

A Yes, sir. I went ahead and called the number that Mr. Rizzo was giving out to his bettors.

Q With what results?

A I spoke with Mr. Esposito and he in turn told me the new telephone numbers.

Q Did Mr. Esposito indicate in that conversation whether the move was going to be permanent or temporary?

A He did not indicate.

Q Did Mr. Rizzo when he was giving out the new telephone numbers, indicate whether the move was going

rmrf

Bradbury-direct

9

to be permanent or temporary?

A He did not indicate either.

Q Following your receipt of this new telephone number from Mr. Esposito did you determine where the new wire room would be?

A Yes, sir.

Q And how, sir?

A I determined through record checks with the Telephone Company.

Q What did that record check reveal?

A That the two telephone numbers in question were located on 123rd Street. It is 251 East 123rd Street in New York City.

Q Would you describe to the Court in detail the physical relationship of the new wire room on 123rd Street vis a vis the location of the old wire room, which was where?

A The old wire room was 2433 Second Avenue, New York.

Q Where are they located --

A The old wire room at 2433 Second Avenue is on Second Avenue, on the west side of the street, between 125th Street and 124th Street. So the proximity of the two rooms was approximately a block and a half and then around

rmrf

Bradbury-direct

10

the corner about, I would say, 20 or 30 feet.

Q In your judgment how much time would it take a person walking at average speed to go from the new wire room to the old wire room?

A If they walked directly there, I couldn't see it taking more than four minutes, four or five minutes.

Q What if anything happened in connection with the execution of what has been marked into evidence as Government's Exhibit 1 on June 16th?

A On June 16th surveillance, our physical surveillance, saw Mr. Esposito leaving 2433 Second Avenue carrying a big trash -- what appeared to be a plastic trash bag, and eventually proceeding into the other wire room on 123rd Street.

As well, Mr. Rizzo was seen eventually entering the 123rd Street wire room.

Q Based on your experience, is there anything to indicate on this surveillance that the move was permanent or temporary?

A - There was no indication that it was a permanent move at all.

Q Directing your attention to June 17th, what if anything happened in connection with the execution of Government's Exhibit in evidence 1?

1 rmrf Bradbury-direct 11

2 A You and I had a telephone conversation and
3 we decided that we were going to maintain our electronic
4 surveillance of the old wire room and also place surveillance
5 units on the street, up in that area, to determine whether
6 or not any of the principals named in this order would enter
7 the old wire room so that we could monitor the telephone
8 activity there.

9 Q When you say surveillance was placed in that
10 vicinity, what places were actually being observed?

11 A Both places.

12 THE COURT: Let the record indicate Mr. Panzer
13 just entered the courtroom.

14 Q Aside from making sure the move from the old
15 wire room to the new wire room was permanent, was there
16 any other reason that surveillances were placed over
17 these two locations?

18 A Yes. I was also concerned with establishing,
19 gathering probable cause for an additional affidavit in
20 this matter.

21 Q Did your monitoring procedure change on June 17th?

22 A It changed in that instead of assigning two special
23 agents to do nothing other than monitor during the pertinent
24 business hours, I decided to keep myself on a standby
25 availability in case our surveillance did in fact place

1 rmrf

Bradbury-direct

12

2 one of these principals in the new location. As well, I
3 assigned another special agent to be on standby also.

4 Q When you say you were on standby, could you tell
5 the Court where you were actually during the period
6 authorized for surveillance in Government's Exhibit 1?

7 A When I was on standby, I was in the same room as was
8 our technical equipment to effect the monitoring.

9 Q Were you in radio communication with the surveilling
10 units on the street?

11 A Yes, I was.

12 Q Assuming that you had received radio communications
13 that the old wire room was being utilized, how quickly
14 could you have begun monitoring?

15 A Immediately.

16 Q What would it have entailed?

17 A Just simply turning a machine on and placing the
18 earphones on my head.

19 Q Could you tell the Court based on your experience
20 why you were not able to determine whether or not the move
21 was permanent on June 17th?

22 A Based on my experience, quite often -- first of
23 all, with this particular gambling operation I knew that they
24 moved at least one time prior.

25 Secondly, when a gambling operation moves, they

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

rmrf

Bradbury-direct

13

generally or they may leave an individual from that operation in the old wire room to accept any telephone calls from bettors who did not get the word as to what the new numbers were going to be.

Also quite often a principal, for example, Mr. Esposito, quite probably would have been able to go to the old wire room and make very pertinent telephone calls, either for the purpose of laying off some action or the purpose of discussing the operation's strategy with a person who may have been even higher up than Mr. Esposito himself.

As well, there was really no way of telling if the whole operation wouldn't have just picked up and moved back to this location, in case they encountered any difficulty at the new location.

Q What types of difficulty, for example?

A For example, if they discovered, through whatever means, that perhaps their telephones were being tapped, or if, for example, they had telephone difficulty and were not getting enough business in, they could have moved back in easily.

Q How long was the new wire, the wire room on 123rd Street, under surveillance until you offered the tapes for sealing?

A It was under surveillance all that following week,

rmrf

Bradbury-direct

14

1
2 in other words, from the 16th through that weekend and
3 including the 23rd.

4 Q What did these surveillances reveal?

5 A They revealed that there was no basic activity --
6 no activity at all in the old wire room.

7 Q Now I am speaking of the new wire room.

8 A That the operation did indeed move there and that
9 Mr. Rizzo was regularly going into the new wire room.

10 Q Was the old wire room, the wire room on Second
11 Avenue, also under surveillance during this period?

12 A Yes, sir.

13 Q What did those surveillances reveal?

14 A That our surveillance agents on the street did
15 not see anyone go in there.

16 Q Were you available, that is, on standby, during
17 this period from June 16th to June 23rd?

18 A Yes, I was.

19 Q Were you in radio communication with the
20 surveilling units?

21 A Yes, I was.

22 Q Directing your attention to June 23rd, what if
23 anything happened with respect to the execution of Government's
24 Exhibit 1?

25 A I gave you a telephone call and reported to you

rmrf

Bradbury-direct

15

what had transpired the previous five or six days,
from the 16th on.

Q Basically, elaborate a little on that.

A The fact that the new wire room on 123rd Street
was being frequented at the appropriate hours by the
clerks in this operation and the fact that the old wire
room on Second Avenue was not being frequented by these
people.

Q What if anything was decided?

A We decided to cease monitoring activity.

Q Were any instructions given to you?

A I presented the tape -- you told me to present
the tapes for sealing.

Q Did I indicate -- was anything further said in that
conversation with respect to the Judge's availability?

A Oh, yes. I had the tapes all ready for sealing
and you said you would call me back and let me know if we
could get to see the Judge on that day. You did so and
he was not available.

Q What happened next?

A We sealed on the following day.

Q That would be June 24th?

A Yes, sir.

Q Did monitoring procedures change at all on June

1 rmrf

Bradbury-direct

16

2 23rd?

3 A No one any longer was on standby of any sort
4 and all efforts to effect any type of monitoring were
5 ceased.

6 MR. ABZUG: Please mark this Government's
7 Exhibit 2 for identification.

8 (Government's Exhibit 2 marked for
9 identification.)

10 Q Showing you what has been marked for identification
11 only as Government's Exhibit 2, have you seen that document
12 before?

13 A Yes, I have.

14 Q Would you describe what it is to the Court, please?

15 A Yes. It is an order authorizing the electronic
16 interception of wire communications over telephone
17 numbers, and if I may refresh my recollection, to give you
18 the numbers -- 289-2547, 289-2579, 686-2138, 686-2299 and
19 348-9822 and 831-9709.

20 Q When was this order signed, sir?

21 A On the 11th of July.

22 Q Why don't you take a look at the bottom of the
23 order, the end of the order?

24 A The 10th. I'm sorry.

25 Q By whom was it signed?

1 rmrf

Bradbury-direct

17

2 A United States District Judge Carter.

3 MR. ABZUG: Your Honor, at this time the Government
4 moves to offer into evidence what has been marked for
5 identification as Government's Exhibit 2.

6 MR. RUBENSTEIN: No objection, your Honor.

7 THE COURT: Any objection by any other counsel?

8 MR. WINOGRAD: No objection.

9 MR. LOPEZ: No objection. All join.

10 (Government's Exhibit 2 received in
11 evidence.)

12 Q Did you participate in the execution of what has
13 been marked into evidence as Government's Exhibit 2?

14 A Yes, I did.

15 Q In what capacity?

16 A Again, I was the supervising case agent.

17 Q Could you tell the Court the duties of a case
18 agent during the period of interception authorized by
19 Government's Exhibit 2?

20 A Yes. Basically the supervising case agent is
21 responsible for every investigative facet of this case.
22 That includes monitoring, duplication, it includes
23 surveillance, it includes regular reporting to both
24 my headquarters as well as to Mr. Abzug's office, it
25 includes supervision of all record checks to be

rmrf

Bradbury-direct

18

conducted, as well as other areas.

Q Approximately how many agents would you say you had under your supervision during the period authorized by Government's Exhibit 2?

A Approximately 20.

Q Did those agents have other duties besides participating in the execution of Government's Exhibit 2?

A Yes, sir, they did. They each had their own cases as well.

Q During the monitoring of Government's Exhibit 1, that is Judge Palmieri's order signed June 11th, what duplication procedure did you follow?

A The duplication of tapes during the first one was done simultaneously as the conversation actually was occurring.

Q Was there any special equipment you needed to do that?

A Yes. They needed to install and rig up another reel for this purpose.

Q Why was this procedure followed?

A Because it is the most -- first of all, it is the most immediate and, secondly, it is the most effective means of duplication.

Q Were you able to follow this same duplication

rmrf

Bradbury-direct

19

procedure with respect to monitoring pursuant to Government's Exhibit 2, that is, Judge Carter's order?

A No, I wasn't.

Q Why not, sir?

A When I asked to have the same arrangement set up for the second one, I was told that for a couple of reasons it was impossible, number one, because of the increased number of telephones being monitored the second time and, number two, because the basic Title 3 efforts of the whole New York office was at a peak and there was no equipment available to do it that way.

Q What alternative duplication procedure did you use in the execution of Government's Exhibit 2?

A I utilized our duplication machine which we have.

Q Could you tell the Court how tapes were duplicated pursuant to Government's Exhibit 2?

A Yes. At the end of the monitoring day the original tape was immediately taken by me and beginning the following morning it was immediately put on the duplicating machine and duplicated, and this was done under my control and supervision.

Q Why was it necessary to duplicate under your control and supervision?

A My priority at that time was that of maintaining

rmrf

Bradbury-direct

20

1 the integrity of the tapes. I did not want my later
2 allegations of any tampering or --

3
4 MR. RUBENSTEIN: I object, your Honor, not within
5 the scope of the hearing.

6 THE COURT: Overruled.

7 A I wanted them basically kept under my control.

8 Q Would you tell the Court what hours you worked
9 during the period authorized for surveillance by
10 Government's Exhibit 2?

11 A Yes. Basically an average day during this period
12 of time for me would have been coming into the office
13 between 8:00 and 10:00 o'clock in the morning and not going
14 home at night until, basically, 10:00 at night, sometimes
15 as late as 2:00 or 3:00 the following morning, depending
16 upon what activities were being done that day.

17 Q Would you tell the Court how many other tapes
18 were made at the end of each monitoring day, that is,
19 the monitoring day authorized by Government's Exhibit 2?

20 THE COURT: Before you go into that, under this
21 order apparently there are six telephones as to which
22 an order was entered and you have not indicated where
23 they were located or why the order was obtained.

24 I understood the shift with respect to the first,
25 but where are these telephones located?

rmrf

Bradbury-direct

21

MR. ABZUG: The telephones are located in basically three different locations and the order indicates that two of the telephones are located at what we have called the new wire room, that is at 251 123rd Street, two of the telephones are located in another wire room which was operated by Danny Cramer on East 30th Street, and the final two telephones that were authorized for interception were located -- were public telephones located in telephone booths at the corner of Lexington and East 81st Street. Is that satisfactory, your Honor?

THE COURT: Not altogether. Why were the orders obtained? Unless you want me to read the affidavits again. You have the witness on the stand and he explained the shift to 123rd Street in his prior testimony, and I understood that.

Q Directing your attention back to Government's Exhibit 2, could you tell the Court why it was necessary to obtain authorization to intercept those six telephones in the course of your investigation of the Dixon operation?

A First of all, with regard to the telephones on East 30th Street, which were Danny Cramer's --

Q What telephone numbers were those?

A 686-2138 and 686-2299.

During the first period of interception, that is,

rmrf

Bradbury-direct

22

pursuant to the order marked as No. 1 here, we had received several outgoing telephone calls from that wire room to the wire room located on East 30th Street, during which calls action, gambling activity, was transferred from the wire room, the first wire room, to Mr. Cramer's wire room.

THE COURT: That is that apartment 3-J at 343 East 30th Street?

THE WITNESS: Yes, your Honor.

A With regard to the pay telephones located on the southeast corner of Lexington Avenue and 81st Street in Manhattan, our physical surveillance activity during the period of the first order had placed Mr. Esposito on several different occasions almost nightly in these telephone booths directly following each business day insofar as a wire room is concerned, and we felt that very pertinent telephone calls were being placed from those two telephone booths relative to the operation.

Q Were any wire communications intercepted over those two public telephones subsequent to the signing of the order by Judge Carter?

A No, sir, none were.

Q What about the remaining two telephones, the telephones at the new wire room on 251 East 123rd Street,

rmrf

Bradbury-direct

23

1 why was authorization applied for there?

2 A Basically, as I said before, we observed the
3 operation moving to that location and having seen that
4 they were not back in the old wire room, we felt for
5 sure that was where the operation was and we kept putting
6 Mr. Rizzo and other clerks into that location at the
7 beginning and following each gambling business day.
8

9 THE COURT: When you say you put them into that
10 operation, what do you mean by that?

11 THE WITNESS: I mean that we saw them enter that
12 location, your Honor.

13 Q Directing your attention back to the monitoring
14 efforts pursuant to Judge Carter's order, would you tell
15 the Court how many original tapes were made at the end of each
16 monitoring day?

17 A Yes. At least four.

18 Q How many duplication machines were available to
19 you at the Manhattan office?

20 A There was one machine available to us.

21 Q How many agents did it service?

22 A It served the entire office and the office at
23 that time had right around 1,000 agents.

24 Q Could you describe to the Court how this
25 duplication machine works?

rmrf

Bradbury-direct

24

1 A Yes. Basically it is a grey machine that is in
2 the same location as our monitoring equipment in the New
3 York office and it has two sets of reels. The original
4 tape goes on the top one and the blank tape that is going
5 to be the duplicate goes on the bottom and they are run
6 through simultaneously.

7 Q How long does it take to duplicate an original
8 tape assuming that the duplication machine is available?

9 A If it was available, it took approximately 20 to
10 25 minutes.

11 Q Were you also able to duplicate an original
12 tape or the original tapes the following day that they
13 were made?

14 A No, sir.

15 Q Would you tell the Court why not?

16 A First of all, quite often the machine was
17 being utilized and usually for a matter which was at
18 that time of extreme importance, it had to be done right
19 away and consequently we were not able to get on it
20 right at that time.

21 Q Was the machine always in an operable condition?

22 A No, sir, it was not.

23 Q How many times did you find the machine to be
24 inoperable?

rmrf

Bradbury-direct

25

1 A I remember, I recall, two or three times that that
2 machine broke down.
3

4 Q How long was the machine operable on those
5 occasions?

6 A At least a day and a half for each time that it
7 was broken.

8 Q Would you tell the Court when your duplications
9 at what part of the day they were made?

10 A Our duplication when we actually duplicated
11 the tapes?

12 Q What part of the day generally.

13 A During the regular business day, up until probably
14 8:30 at night.

15 Q What was the result of your inability to always
16 duplicate the original tapes the following day?

17 A Consequently a backlog of tapes needing duplication
18 was formed.

19 Q After you had finished duplicating an original
20 tape, was it ready to be sealed?

21 A No, sir. What we did then was to listen to
22 the duplicated tape to assure ourselves that we had
23 a good working copy.

24 Q Could you describe to the Court how you checked
25 the duplicator audibility?

rmrf

Bradbury-direct

26

1 A Yes. It was just put on a tape recorder
2
3 simultaneously as other tapes were being duplicated --

4 Q When you say other tapes, do you mean originals?

5 A Yes. As we would put an original on, that would
6 finish and immediately we would put the duplicate on
7 a tape recorder and put another original on to duplicate
8 it and we would listen to it to make sure we had a good
9 copy from which to conduct our investigation.

10 Q How long would it take to listen to a duplicate
11 to insure it was audible?

12 A At least three-quarters of the way through,
13 and that took approximately 15 to 20 minutes.

14 Q Did the duplicates ever have to be rerecorded?

15 A Yes, sir.

16 Q On how many occasions did they have to be
17 rerecorded?

18 A I can recall approximately 10 to 12 times we
19 had to completely reduplicate given tapes.

20 Q Aside from the duplication machine breakdowns,
21 did you ever have any other equipment failures which
22 affected your readiness to seal the tapes made pursuant
23 to Government's Exhibit 2?

24 A Yes, sir. Our pen register was having difficulty
25 during this period of time.

rmrf

Bradbury-direct

27

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Q What effect, if any, did that have?

A Basically, because we were unable, due to this failure, to ascertain an outgoing phone number that was dialed, we had to duplicate the tape and rerun it through a machine which had a pen register attached to it so that hopefully it would come out in a complete, readable number.

Q What actually did you do?

A Actually, we took the tape, the duplicate tape, and we put it on a tape recorder and this tape recorder was attached to another pen register and we would have to run this tape and hopefully the pen register would indicate the number that was dialed that the earlier pen register had missed altogether.

Q If the second pen register wouldn't indicate the number dialed, what if anything did you do?

A Then we would try the original on it in the hopes that the pen register would operate better using the original.

Q You are speaking now of the original tapes?

A Yes.

Q What percentage of original tapes versus duplicate tapes did you think you listened to to try to work out this pen register problem?

1 rmrf

Bradbury-direct

28

2 A Basically about 60 per cent duplicates, the rest
3 originals.

4 Q How many days would you say that you experienced
5 problems, the difficulties you described, with the pen
6 register?

7 A Approximately two complete days of monitoring
8 the pen register was not working. For each day the pen
9 register was not working it required at least a day
10 and a half time to try to work it out.

11 Q Do you recall which days the pen registers were
12 inoperable?

13 A I believe they were the 13th and the 14th of July.
14 However, it could be a day earlier or later in there.

15 Q When did surveillance start pursuant to
16 Government's Exhibit 2?

17 A On the 11th.

18 Q When did it conclude?

19 A On the 29th. This is of July, 1975.

20 Q Were you able to duplicate and review the
21 duplicates -- were you able to duplicate the originals
22 and review the duplicates' audibility by July 29th?

23 A No.

24 Q Why not?

25 A Basically because of the backlog problem I

rmrf

Bradbury-direct

29

explained earlier.

Q How many original tapes on the 29th remained to be duplicated and the duplicates checked for audibility?

A I would say it was approximately 15 or 20.

Q When were all the tapes made pursuant to Government's Exhibit 2 ready to be sealed?

A On 8/6/75.

Q When in fact were they sealed?

A On that date.

Q What were you doing from July 29th to August 6, 1975?

A I was concerned primarily with getting these tapes duplicated, with getting rid of that backlog. I was assuring that the duplicates were listened to so that we had a good working copy, I was assuring that the original tapes were under my complete control during that period of time and locked up every night in the cabinet that I locked them in, I was assuring that all the chain of custody forms were correctly filled out and showed just how the original tapes were treated.

As well, aside from this, I was concerned with once again establishing probable cause for a new affidavit that we were considering at that time.

MR. ABZUG: I have no further questions of

rmrf

Bradbury-direct

30

1 this witness, your Honor.

2 THE COURT: you finish your examination?

3 What did he do after he completed his work on August 6th?

4 MR. ABZUG: I believe he testified the tapes were
5 sealed on August 6th.

6 CROSS EXAMINATION

7 BY MR. KORNBERG:

8 Q You told us you were engaged for about five
9 years in the Organized Crime Bureau of the FBI?

10 A Yes.

11 Q During those five years you participated in
12 about 35 to 40 gambling investigations, is that correct?

13 A Yes.

14 Q And you rendered some opinions as to why you stayed
15 on the telephone number after you ascertained the number
16 was going to be moved? I am talking about the two numbers
17 0702 and 0704.

18 A Yes.

19 Q And you rendered your opinion and gave us three
20 reasons? You told us that the operation had moved once
21 before, is that correct?

22 A Yes.

23 Q Did they ever move back, when they moved
24 once before, to the old number?
25

rmrf

Bradbury-cross

31

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A I don't know.

Q In any event, you knew they moved once before?

A Yes.

Q That was told to you by the informant?

A No. We saw that at one time they were at a location on 125th Street.

Q Did you ever ascertain whether or not they had moved from that location on 125th to another location or back?

A That they had moved? Yes. I ascertained they had moved.

Q Back?

A On that particular occasion, no.

Q Did you ever know whether or not this particular operation had moved back from one location to another? Yes or no.

A No.

Q You also told us or rendered an opinion that you stayed on because occasionally somebody would stay at the telephone number in case some of the gamblers or bettors didn't ascertain the new number?

A Yes.

Q Stayed on one day, is that correct?

A Sometimes it would --

rmrf

Bradbury-cross

32

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Q No, no, no. In this particular case, you stayed on one day?

A I am getting confused --

Q After they moved on the 15th --

A They moved on the 16th.

Q Were there any bets made on the 16th to 0702 and 0704?

A No.

Q How about the next day, any bets made, any old gamblers phoning in any bets the next day, yes or no?

A I wouldn't know. I would only know if our surveillance agents had placed a particular person involved into that wire room.

Q I am not talking about that --

A I wouldn't have had the opportunity.

Q Your machine itself, that was connected, assuming nobody phoned you on any day -- assuming nobody phoned you and told you somebody went into the particular location where the action was being taken, correct, and assuming it was between the hours that were being permitted to be wire tapped, according to the order, would the machine start automatically when the phone was lifted off the hook?

A No.

Q You have to turn on the machine?

rmrf

Bradbury-cross

33

1 A Yes, and we don't do so unless surveillance
2
3 tells us these people went in.

4 Q Did they tell you somebody went in the day
5 after they moved?

6 A No.

7 Q How about the next day?

8 A No.

9 Q How about the following day?

10 A No.

11 Q How about any day after they --

12 A No.

13 Q So that reason was taken care of, that --

14 MR. ABZUG: Objection.

15 THE COURT: What does that mean, that reason was
16 taken care of? Do you withdraw the question?

17 MR. KORNBERG: I withdraw the question.

18 Q As an expert, would you tell us why a gambling
19 operation will move its telephones?

20 A Yes. Basically it is to decrease the chances
21 of getting caught at one location, being there too long.

22 Q So the likelihood is that after they move
23 their telephone the gamblers themselves have considered
24 themselves at a location too long and they are trying to cut
25 or stop any particular surveillance or the likelihood

1 rmrf

Bradbury-cross

34

2 of surveillance?

3 A At that time?

4 Q At that particular time.

5 A Yes.

6 Q On or about the 14th of June you had been
7 recording conversations between the 11th and the 14th,
8 did you ascertain over any telephone wires that the numbers
9 were going to be changed? Yes or no.

10 A Yes.

11 Q In addition to ascertaining that the numbers
12 were going to be changed, did you also obtain any
13 information from any informants that the numbers were
14 going to be changed?

15 A Yes.

16 Q In addition to that, you also made a telephone
17 call yourself, did you not?

18 A Yes, I did.

19 Q And you were told a number to call in order to find
20 out what the new number was going to be?

21 A That's right.

22 Q And you had to decode that particular number?

23 A Yes.

24 Q So that on or about the 15th of June you knew
25 at that time that there was going to be no more action taken
over the telephones of 0702 and 0704?

1 rmrf

Bradbury- cross

35

2 A No, sir, I didn't know that.

3 Q What did your informant tell you with respect
4 to the move with respect to the telephone?5 A I received information to the effect that the
6 operation was going to move and beginning on that day,
7 on Monday morning.8 Q Did any of your informants, without telling
9 us who they are, work for the operation?10 MR. ABZUG: Objection, your Honor. I don't
11 believe they are entitled to inquire as to that, nothing
12 beyond the facts set forth in the affidavit.

13 THE COURT: Objection sustained.

14 Q The information you received with respect to
15 the move by the informant, was that the operation was
16 going to be moved starting at a certain date?

17 A Yes.

18 Q When did you receive that information, what date?

19 A I can't recall the exact date, but I can say that
20 it was probably beginning either on that Monday or after,
21 but I can't recall the exact date that I received that
22 information.

23 Q Was it prior to the move?

24 A Yes.

25 MR. ABZUG: It is set forth in the affidavit,

rmrf

Bradbury-cross

36

1 I believe, your Honor.

2 THE COURT: His answer stands.

3 Q Do you recall the date that you made the telephone
4 conversation in which you ascertained the new number?
5

6 A That was the 14th.

7 Q That was two days before the move itself?

8 A Yes.

9 Q Was it also on the 14th that you received or
10 intercepted a telephone conversation in which it was told
11 or stated that the move was going to be made?

12 A Yes.

13 Q Surveillance then started with respect to the
14 123rd Street address, is that correct, after you received
15 notification that there was going to be a move?

16 A That is correct.

17 Q And you also kept up some surveillance of the old
18 address as well?

19 A Yes.

20 Q And the surveillance of the old address was
21 fruitless with respect to gambling operations, is that
22 correct?

23 A It was fruitless with respect to seeing anyone
24 going in the door.

25 Q Nevertheless, for four days, or one of the

rmrf

Bradbury-cross

37

reasons for the delay in sealing is the four days that you remained or that surveillance was being made at the location or the old location at Second Avenue?

MR. ABZUG: Objection as to form, your Honor.

THE COURT: Overruled. You may answer the question.

A Could you repeat it again?

MR. KORNBERG: May we have it read back, your Honor?

THE COURT: You forgot it already?

Q Was one of the reasons for the delay the four days that you waited at the location on Second Avenue?

A I don't believe there was a delay. We were within the scope of our authorization.

Q The authorization was to ascertain gambling activities with respect to four individuals, is that correct, four or five named individuals in the first order?

A That is correct -- five.

Q During the four days that you remained on the telephones I think you got 400 some odd thousand dollars worth of horse bets, was that, gambling bets -- it exceeded something like \$450,000?

A I seem to recall that figure but I am not sure.

Q In excess of \$400,000?

rmrf

Bradbury-cross

38

1 A I seem to recall that figure. I am not sure
2
3 whether it was in excess or below that.

4 Q Did you take any recordings of Arthur Sonneschein
5 during those four days?

6 MR. ABZUG: Objection, your Honor.

7 THE COURT: Which days?

8 MR. KORNBERG: June 11th to June 15th.

9 Q Was Sonneschein recorded at that time?

10 A I can't recall whether he was specifically recorded
11 at that time or not.

12 Q How about Danny Cramer, was he recorded?

13 A Yes.

14 Q How about Richie, last name unknown?

15 A Yes.

16 Q How about Richard Esposito?

17 A Yes.

18 Q How about Alex Nichas?

19 A I can't recall.

20 Q Danny Cramer?

21 A I already said yes.

22 Q And Richie? I think you said yes to Richie as
23 well. You are not telling us with respect to Alex Nichas
24 or Mr. Sonneschein whether or not they were recorded or not
25 at that time? You don't recall as to those two?

rmrf

Bradbury-cross

39

MR. ABZUG: Asked and answered, your Honor.

THE COURT: He may answer again.

Q As to those two you do not recall?

A I do not specifically recall whether or not those two individuals were intercepted.

Q In any event, with respect to the other ones, you have already gotten 400 some odd thousand dollars worth of action recorded?

MR. ABZUG: Objection as to form, your Honor.

THE COURT: You are repeating. There is no point repeating these matters.

Q The machine over at 61st Street was duplicating the recordings at that time --

THE COURT: Where?

MR. KORNBERG: At the FBI office -- 69th Street, your Honor.

Q That machine was recording at that time, you were making duplicates?

MR. ABZUG: Objection as to time and place, your Honor.

MR. KORNBERG: This is the time the originals were being made --

THE COURT: You should be more specific if you have a purpose in mind instead of putting your questions

rmrf

Bradbury-cross

40

in the general framework that you remember.

Q Between June 11th and June 15th as the machine was recording the original it was also duplicating, is that correct?

A That is correct.

Q So you did not have to waste time or subsequent time duplicating the tapes of June 11th through June 15th, is that correct?

A Yes.

Q There came a time that you realized for the first time, as the supervising officer, that the particular wire room on Second Avenue was no longer working or no longer in operation, is that right?

A Eventually we reached a decision not to continue. I can't make a representation as to whether or not gambling activity would continue to take place after that time.

Q There came a time that you reached a decision based upon your expertise that the Second Avenue wire room was no longer operating, is that correct?

A Based upon what our surveillance units saw and based upon my conversation with Mr. Abzug.

Q And also based upon the fact that there was no recording being made at that time?

rmrf

Bradbury-cross

41

1
2 A Correct.

3 Q When did you reach that decision?

4 A The date was on the 23rd, I believe.

5 THE COURT: June 23rd?

6 THE WITNESS: That is correct, your Honor.

7 Q So that from June 15th to June 23rd, nothing was
8 being done with respect to the -- when I say nothing,
9 nothing illegal, as far as gambling, that you knew of,
10 was being done or conducted with respect to the Second
11 Avenue location?

12 A No.

13 Q The telephones involved --

14 A The answer to that is no. It is the 16th.

15 Q June 16th to the 23rd, is that correct?

16 A Yes.

17 Q Your reason for continuing the surveillance
18 from the 16th to the 20th you told us was because the
19 operation had moved once before, is that correct?

20 A That is what I said.

21 Q And because occasionally somebody stays on
22 the old number for a while for old bettors that may phone
23 in and not get the new number, is that correct?

24 A I said that, also.

25 Q And because Mr. Esposito may go back and make an

rmrf

Bradbury-cross

42

important telephone call?

A That is correct.

Q And that is the reason for the failure to seal between the 16th and the 23rd, is that correct?

A I didn't know that there was a failure to seal in any particular time period.

MR. KORNBERG: I have no further questions.

THE COURT: Does any other counsel desire to cross examine with respect to matters not gone into?

MR. WINOGRAD: Correct, your Honor.

CROSS EXAMINATION

BY MR. WINOGRAD:

Q Am I correct in that from April 15th until July 10th there were no interceptions of any conversations either at Second Avenue or at 251 East 123rd Street?

A You said April, sir, and I don't know --

Q I meant June, June 15th until July 10th.

A At which location?

Q At either of the two locations?

THE COURT: Which two?

MR. WINOGRAD: I said Second Avenue or 251 East 123rd Street.

MR. ABZUG: I don't see what the July 10th date has to do with this issue, your Honor. The tapes were

1 rmrf

2 sealed on June 23rd.

3 MR. WINOGRAD: May I proceed my way, your Honor?
4 This is cross examination.

5 THE COURT: Cross examination doesn't mean you have
6 to come all over the lot, you know. We do have specific
7 issues here. Well, go ahead.

8 A I can answer you that from the 16th to -- your
9 date was July --

10 Q July 10th.

11 A -- there was nothing at either location.

12 Q No intercepted conversations?

13 A That is correct.

14 Q And you already indicated that July 24th was the
15 first time that you sealed the conversations intercepted
16 from June 10th to June 15th?

17 MR. ABZUG: Objection to form, your Honor.

18 A Would you repeat that?

19 Q When was the first time you had the tapes sealed
20 for the intercepted conversations of June 10th to June 15th?

21 A June 11th to June 16th, those conversations
22 were sealed the 23rd, I believe I testified.

23 THE COURT: On June 23rd. He testified to that.

24 MR. WINOGRAD: I think he testified on the 24th,
25 your Honor.

rmrf

Bradburv-cross

44

THE COURT: When were they sealed?

THE WITNESS: Now I am starting to get confused. I believe it was on the 24th that they were actually sealed. On the 23rd we tried to get them sealed but could not.

Q That was because you were told the Judge was unavailable?

A That is correct.

Q How many tapes were there that were intercepted from June 11th to June 16th in that four-day period?

A I believe there were 21, but --

Q How long would each tape be from the point of time, in other words, how long would it take to play each of those tapes?

A I'm sorry, how long would it take to play each of those tapes?

Q Yes.

A However long the conversations were. I don't mean to sirt any questions --

Q Were they half hour tapes or were they able to play for two hours, three hours?

A I don't recall what hour limitation each reel had.

Q When did you duplicate those four days of tapes?

A During that period of time, as I said before,

rmrf

Bradbury-cross

45

1
2 it was a simultaneous situation whereas the originals
3 were actually-- as the conversation was actually taking
4 place, they were being duplicated.

5 Q Would you say, sir, that those 21 tapes had
6 already been duplicated by June 16th, 1976?

7 A The end of the period of time on the 16th, yes.

8 Q All the tapes had been duplicated?

9 A That is correct.

10 Q And the originals were in the custody of the
11 FBI?

12 A In my custody, yes.

13 Q In some safe at FBI headquarters?

14 A That is correct.

15 Q The very first time you brought them down to Judge
16 Palmieri was some eight days later, on the 24th?

17 A If it is eight days later, yes.

18 Q With respect to the second order, the one that
19 was signed by Judge Carter on July 10th, for how long a
20 period did you intercept conversations pursuant to that
21 order?

22 A It was from the 11th through the 29th.

23 Q Would it be correct, sir, in stating that the
24 first time those tapes were sealed was on August 6, 1975?

25 A The only time those tapes were sealed, yes.

rmrf

Bradbury-cross

46

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Q I think you already testified that during that period of time you were having trouble because the duplication machine was not available?

A On and off -- that is correct, yes, sir.

Q Did you use the duplication machine in another FBI office, in some other jurisdiction?

A No, I did not.

Q Did you ever go to the Newark office?

A I have been there.

Q In connection with the duplication of tapes in this case?

A No, sir, I did not.

Q Did you attempt to go to that office?

A No, sir.

Q Were you the only person who duplicated the tapes in this case?

A If I did not duplicate the tapes, they were done within my control and vision, I was standing right next to the person who did it.

Q In other words, you were there all the time?

A During duplication, that is correct.

Q You indicated that from the 29th to the 6th, I believe, there were eight days also that you did not seal these tapes? There was an eight-day lapse from the

rmrf

Bradbury-cross

47

1 termination of the conversations intercepted until the
2 sealing of the tapes?

3
4 A Whatever that time period is.

5 Q How many days was it?

6 A How many days in July?

7 Q I am asking you.

8 MR. ABZUG: Maybe we can stipulate there are 31
9 days in July?

10 A That is eight days.

11 Q Did it take you, sir, those eight days to duplicate
12 the tapes that were intercepted from July 11th to July 29th?

13 A It took me those eight days to duplicate what
14 the backlog was at the end of the 29th.

15 Q How many tapes were intercepted during that period
16 of time, from July 11th to July 29th?

17 THE COURT: Do you mean tapes intercepted?

18 MR. WINOGRAD: Conversations that resulted --

19 THE COURT: I assume you mean conversations
20 that were intercepted.

21 Q You intercepted a number of conversations?

22 A Yes.

23 Q These were recorded on tapes?

24 A Yes.

25 Q How many tapes were there which carried all the

rmrf

Bradbury-cross

48

1
2 conversations that have been intercepted from July 11th
3 to July 29th?

4 A I believe it was in in the neighborhood of
5 120, something like that.

6 Q Well, do you know?

7 A Exactly, right now?

8 Q Yes.

9 A I think it is 120.

10 Q On July 29th how many tapes were in that backlog
11 that you speak of?

12 A I believe that I said there was approximately
13 15 to 20.

14 Q 20 tapes?

15 A Backlogged, originals that had to be duplicated.

16 Q Did you not also indicate, Agent Bradbury, that
17 each of those tapes when you were recording or
18 duplicating took approximately 20 to 25 minutes?

19 A The actual duplication?

20 Q Yes.

21 A Yes.

22 Q Am I correct?

23 A Yes.

24 Q You say there were 20 or 21 tapes that as of the
25 29th had not been duplicated?

rmrf

Bradbury-cross

49

MR. ABZUG: Objection. That wasn't his testimony, your Honor.

Q How many tapes were there that had not been duplicated as of July 29th?

A Between 15 and 20.

Q Each of those took 20 or 25 minutes. With respect to the pen register problem, how many telephone numbers as of July 29th were you trying to locate by using the duplicates at that point?

A We had tried previous to the 29th and had solved whatever we were trying to do prior to the 29th.

Q As of the 29th you had no problem with the malfunctioning of the pen register and the obtaining of telephone numbers?

A The 29th was the last day of interception and obviously we were not using a pen register at that time, no.

Q You indicated there was a malfunctioning with the original pen register and you were not able to achieve the obtaining of certain phone numbers?

A That is correct, and that was resolved prior to the 29th.

Q So as of the 29th there was no problem with obtaining new phone numbers, the only problem you had was the

rmrf

Bradbury-cross

50

15th or 20th tape backlog that had to be duplicated?

A As well as, as I said before, to listen to each duplicate to make sure it was a good working copy we could work from, as well as attempting to work up an affidavit for an additional Title 3 matter we were considering at that time.

Q Did you not indicate that at the time you were making the duplications simultaneously you were also playing the duplication -- the duplicate made prior to that one and listening to it at that time?

A That is correct, but we are dealing with a backlog as of the 29th.

Q 15 to 20 tapes?

A Yes. As each of those were being duplicated they were also listened to to make sure they were all right.

Q And the duplication was 20 to 25 minutes?

A The duplication, yes, sir.

MR. WINOGRAD: No further questions, your Honor.

MR. GREENBERG: Harvey Greenberg, your Honor, attorney for Mr. Rizzo.

CROSS EXAMINATION

BY MR. GREENBERG:

Q On the question of the tapes that were completed on July 29, 1975, and directing your attention to that,

rmrf

Bradburv-cross

51

1 the order number two tapes, if I may call them that,
2 were you familiar at the time -- you say you had about 100
3 tapes that were fully duplicated, would that be fair,
4 without pinning you down, and 15 to 20 that were not fully
5 duplicated? Would that be a fair statement of the
6 condition you were in on July 21, 1975?
7

8 A I guess it would, yes.

9 Q Did you make any attempt to at least seal the
10 tapes that were fully duplicated?

11 A No.

12 Q None whatsoever? All right. Were you familiar
13 with the law with reference to sealing of tapes at the time
14 on July 29, 1975?

15 A I had read Title 3 previous to July.

16 Q Were you under the guidance of Mr. Abzuq,
17 the attorney for this case, with reference to the sealing
18 of these tapes, with reference to the procedures followed,
19 getting the order, renewing the order, getting judicial
20 supervision, filing interim reports as required by the
21 order, limiting your hours of interception? Were you under
22 the guidance of Mr. Abzuq?

23 A Most certainly.

24 Q As far as the unduplicated tapes -- let's refer
25 to them for a minute -- were you familiar with the

rmrf

Bradbury-cross

52

1 provisions of the code which provided that after the
2 tapes were sealed they may be unsealed for duplicating
3 purposes? Were you ever familiar with that provision of
4 the law?
5

6 A No, sir.

7 Q Had Mr. Bazuq spoken to you about this provision
8 of the law?

9 A I don't recall whether he did.

10 Q Had you had any conversation with Mr. Abzug
11 with relation to the fact that the 15 to 20 tapes on July
12 29th were unduplicated?

13 A I told him that we still had some to go, yes, sir.

14 Q Did he give you any legal advice or any advice
15 as the Assistant United States Attorney in charge of this
16 case as to what to do with, A, the entire batch of 120 cases,
17 B, the batch of cases that were already duplicated, the
18 100 tapes, and, C, the 15 to 20 not duplicated? Did he give you
19 any advice on that?

20 MR. ABZUG: That is a compound question, your
21 Honor.

22 THE COURT: Yes, separate your questions,
23 please.

24 Q May I take A first?

25 A Which was?

rmrf

Bradbury-cross

53

Q That is a good question. The 120 tapes, did he give you any advice what to do with those on or about July 29th, 1975 when you knew, A, that you were complete with your interceptions -- that is correct?

A Yes.

Q Did you get any advice as to that?

A Get them immediately done and --

Q "Done" being what?

A Duplicated.

Q Were there any advices as to what you should do with the ones that were already done, as you phrase it?

A No.

Q Did you have any conversation, "Well, I have at least 80 per cent of them done. Should I seal those?" Was there any discussion with reference to that between you and Mr. Abzug or between Mr. Abzug and you?

A I don't recall breaking it up like that, no.

Q Then the answer to C, the 15 or 20 not duplicated-- was there any discussion with reference to "Well, let's seal them and then we can duplicate them after by getting permission of the Court"? By the way, you knew that to be a provision of the code on July 29, 1975?

A At that time I did not, no.

Q Did you have any discussion with Mr. Abzug

rmrf

Bradbury-cross

54

1 with reference to that?

2 A To having them sealed and --

3 Q Sealed immediately and reduplicating them at
4 your leisure for your own benefit or to give them an
5 investigative authority or to use them to move ahead in
6 the investigation?
7

8 A The basic thing we discussed was that these
9 tapes should remain under my control for chain of custody
10 purposes and to get them done and sealed immediately, as
11 soon as I could do it.

12 Q There was no discussion that they belonged under the
13 custody of the Court that issued them? Was there any dis-
14 cussion as to that between you and Mr. Abzug on July 29th,
15 that it was no longer the question of your custody, it was
16 the question of the Court's custody? Was there any question
17 as to that?

18 MR. ABZUG: Objection as to form and I believe
19 he has answered that, your Honor.

20 THE COURT: I will allow it.

21 A Could you repeat the question?

22 Q Was there any discussion between you and
23 Mr. Abzug or Mr. Abzug and you on July 29th, 1975,
24 or shortly thereafter, now that it, being the tapes, the entire
25 120 tapes, now was for the Court's custody, not yours or Mr.

rmrf

Bradbury-cross

55

Abzug? Was there any discussion --

A No mention was made of the Court having custody of the tapes at that time.

Q Or that she should have custody of the tapes --

A As soon as possible --

Q Who said that?

A Mr. Abzug said, "Let's get this going and get them duplicated and get them in as soon as possible, as soon as you can do it."

MR. GREENBERG: No further questions.

CROSS EXAMINATION

BY MR. LOPEZ:

Q With regard to the duplicating machine, was there a person assigned to this machine that would carry out the matter of duplicating?

A Not by me there wasn't nor by the office.

Q In other words, this machine just existed in the office and you could use it sort of when you got to the machine, is that correct?

A That is correct.

Q Were there any time sheets kept on this machine?

A No.

Q Was this machine operable 24 hours a day?

A Yes.

1 rmrf

Bradbury-cross

56

2 Q You mentioned a phrase before when Mr. Abzug
3 asked you with regard to this machine that it was
4 being used during normal working hours, is that correct?

5 A Yes, and then I explained by normal working
6 hours the hours related to the gambling operation, not my
7 job, but, rather, the normal working hours of the gambling
8 operation.

9 Q Say on one specific day during the course
10 of this investigation you wanted to use the duplicating
11 machine, you would go down with the original tapes that
12 you had to the machine?

13 A That is correct.

14 Q And you would see if anyone was using it?

15 A That is correct.

16 Q Was there any supervisor as far as the
17 machine was concerned?

18 A Not that supervised the machine. The machine
19 was attached to a particular section --

20 Q Was there anyone who determined priorities, who
21 should go first or use the machine first?

22 A Priorities were established at the time.

23 Q Who established those priorities?

24 A The parties who wished to utilize the machine.

25 Q In other words, it would sort of be a get-together

1 rmrf

2 at the machine, in other words, you talk it over with the
3 agent who had the machine and ask him how important
4 was his job and say, "My job is this important"? Is
5 that what it amounted to?

6 A It wouldn't be a get-together. We would say, "What
7 do you have, when do you need it?"

8 "I need to now, yesterday, tomorrow" --

9 Q There was an exchange between the parties using
10 the machine with no one in charge of the machine itself?

11 A That is correct. The machine was attached to a
12 section in the office and by section I mean a squad,
13 okay? That was for property reasons. The machine is
14 a service and that is exactly -- we would do it on
15 a priority type basis.

16 Q You yourself would operate the machine, is that
17 correct?

18 A Me or somebody I told to do it.

19 Q Or the person that you told to do it was an agent
20 like yourself and was taught how to use the machine?

21 A Or a clerk at that time.

22 Q Was there anyone specifically designated to
23 the machine to use it, in other words, an official
24 operator of that machine?

25 A No, sir.

1 rmrf

Bradbury-cross

58

2 MR. LOPEZ: No further questions.

3 CROSS EXAMINATION

4 BY MR. LAIFER:

5 Q Concerning the process of plant number two,
6 concerning Judge Carter's order, Government's Exhibit 2,
7 you worked in a plant, isn't that correct, to monitor it?

8 A I don't know what you mean by "plant." It was in
9 our office.

10 Q Was it reel-to-reel monitoring?

11 A Yes.

12 Q Not a cassette type?

13 A That is correct.

14 Q On reel-to-reel you can duplicate simultaneously,
15 as testified to, isn't that true?

16 A The first time we could have, this time we were
17 unable to.

18 Q Because of equipment, but it could have been
19 done --

20 A No, it could not, because of the equipment.

21 Q You can duplicate simultaneously?

22 A It is possible to do that given the necessary
23 equipment, yes.

24 Q You can also duplicate on a duplicating machine?

25 A That is correct.

rmrf

Bradbury-cross

59

Q You could also duplicate from another tape recorder?

A Not without losing, number one, clarity, or without my not having complete control over the tapes. I did not want to give originals --

Q Did you --

THE COURT: Let him finish.

A I didn't want to give original tape recordings and farm them out to three or four different people and have them utilize individual tape recordings which nine out of ten times did not do the duplicating job necessary for our purposes.

Q When you did the duplicating, you had to farm them out?

A It was me or somebody directly under my control and I was right there. If we had nine or ten different tape recording machines --

Q Could you have used one or two for the 20 tapes?

A I did not want these things out of my control and custody --

Q They would have been in the custody and control of FBI agents, is that correct?

A Depending on who was available. It could have been a clerk.

Q But it could have been a special agent?

rmrf

Bradbury-cross

60

1

2

A Certainly, if I assigned one.

3

4

Q You can obtain duplicate recording from tape recording machines?

5

A I assume you can.

6

Q You have been an agent for five and a half years?

7

A Yes.

8

9

Q How long have you had this duplicating machine at FBI headquarters?

10

A It is still there.

11

Q How long has it been there?

12

13

A Prior to my arrival. I don't know how long it was there.

14

15

Q You are aware agents duplicate from other tape recordings?

16

17

A I am aware it is possible. I am also aware we ahrdly ever do it because it simply does not give the clarity needed for our investigation.

18

19

Q You have heard of it being done?

20

21

A Certainly -- in our cases? No. I know it is a possibility.

22

23

Q How many tape recording machines were available to you during this period of time during Judge Carter's order at FBI headquarters?

24

25

A Any tape recording machine?

rmrf

Bradbury-cross

61

1
2 Q Yes.

3 A A number? I would have to say approximately
4 ten, but I can't narrow it down.

5 Q How many agents were working with you as special
6 agents assigned to this case at that time?

7 A As I said, around 20.

8 MR. LAIFER: No further questions.

9 CROSS EXAMINATION

10 BY MR. RUBENSTEIN:

11 Q Agent Bradbury, going back to the period of time
12 between June 11th and June 16th, while conversations
13 were being intercepted during that period of time, was
14 there independent surveillance on Second Avenue in the
15 neighborhood of what has been referred to as the first
16 wire room?

17 A Most certainly, yes.

18 Q Streetsurveillance?

19 A Yes.

20 Q And at that time the only way you would activate
21 the eavesdropping equipment is when you received a call from
22 the surveilling agents?

23 A That is correct.

24 Q On your 30 to 35 prior gambling investigations
25 on how many of those occasions did you have wire rooms changing

rmrf

Bradbury-cross

62

location?

A That I can recall right now, I would say two or three.

Q Two or three out of 30 or 35?

A For 30 and 35 gambling investigations doesn't necessarily mean these investigations entailed a wire room that I am going to be able to see or monitor activity from. They could be a request from a complete other office down south somewhere. What I am saying is what I have personal knowledge of regarding wire rooms and whether or not they move or go back or send somebody becomes, I would say, maybe between three and five, something like that.

Q So that the total basis of your knowledge is on two to three to five experiences?

A Personal experiences, yes.

Q That is the basis of the opinion you have given to this Court at this time?

THE COURT: The basis of the opinion as to what?

MR. RUBENSTEIN: As to the time the wire room returns to its original location.

Q Is that correct?

A That is correct.

Q Let's take the figure five. You say that is

rmrf

Bradbury-cross

63

maximum number of instances where wire rooms have moved, to your experience, is that right?

A Well, that I personally was involved in, okay? I have heard from other agents that they had the same situation, but I am not going to try to repeat what they said. It is just my personal involvement in a given wire room type of case -- call it five, for now.

Q When you spoke to Mr. Abzug and talked to him about when to stop monitoring or when to seal certain tapes, you advised him based upon your knowledge, your expertise?

A My knowledge, that is correct.

Q And Mr. Abzug didn't tell you what his expertise was on the area of wire rooms and wire room movings, did he?

A Not that I recall.

Q You were the expert, between you and Mr. Abzug, is that correct?

A We both discussed what we should do. I don't know who was the expert.

Q In those instances when you say you have personal knowledge of wire rooms moving, on how many of those occasions did the wire rooms go back to the original location?

A The whole operation or just one or two people?

rmrf

Bradbury-cross

64

1 By wire room you mean foresaking the new place and everything
2 going back? I withdraw the question.
3

4 When you say on up to five occasions wire rooms
5 had moved, are you talking about the entire operation
6 moving or pieces of the operation moving?

7 A Basically I am talking about the entire operation
8 were leaving the last place open for a participant in
9 this operation to utilize those telephones.

10 Q Agent, I am talking about in your experience
11 of one to five prior wire rooms that left the location
12 where you observed them, that you had personal knowledge of.
13 Do you understand that?

14 A Yes.

15 Q In those instances did they move all of the
16 operation, the entire operation?

17 A Yes, but then they sent a person back --

18 Q Yes or no?

19 THE COURT: I am not going to allow that. The
20 witness made it perfectly clear the entire operation moved
21 but somebody remained behind to pick up telephone calls.

22 Q In all five of your prior experiences, then, the
23 entire operation moved but they sent someone back to pick
24 up calls?

25 THE COURT: Not they sent someone; somebody was

rmrf

Bradbury-cross

65

there to pick up calls. I suppose every lawyer thinks he has to get his name on the record here.

Q So that in the five prior situations that you have knowledge of, somebody remained at the first location, is that correct?

A Yes, and the room was being used.

Q In this situation nobody ever went back to the first operation, is that correct?

A I don't know. To our knowledge, nobody did.

Q You had surveillance?

A Yes.

Q You relied on that surveillance?

A Yes.

Q You relied upon it to the degree that you didn't even turn on your recording device because you received no notice from any agent on the street?

A That is correct.

Q Did you prepare any logs of the times you worked in this particular investigation, from June 11th on, of 1975?

A Certainly, for technical surveillance as well as physical surveillance.

Q Do you have those logs here today?

A No.

Do you know if Judge Carter, relating to the second

rmrf

Bradbury-cross

66

1
2 order, if he was available for the sealing of the second
3 order?

4 A If Judge Carter was available?

5 Q He signed the second order?

6 A Yes.

7 Q Was he available for sealing of the second order?

8 A I don't know.

9 Q Did you ask Mr. Abzug that?

10 A Did I ask him that?

11 Q Yes.

12 A No.

13 Q Did Mr. Abzug tell you if Judge Carter was or was
14 not available?

15 A On the 6th, whoever signed it, the sealing order,
16 he told me to come down and do it on the 6th.

17 Q Do you know who signed that sealing order on the
18 6th?

19 A It escapes me now.

20 Q As of the 29th, is it fair to say that from the
21 29th to August 6th of 1975 there were no mechanical
22 breakdowns in the duplicating machine?

23 A From the 29th to the 6th?

24 Q Right.

25 A No, only during the period before the 29th.

1 rmrf

2 Q In other words, those delays that you spoke about
3 before, of a day and a half on breakdowns, or three days
4 on breakdowns, that occurred prior to the 29th of July,
5 1975?

6 A That is correct.

7 Q That was part of the reason for the backlog after
8 July 29th?

9 A That is correct.

10 Q You also testified as to 10 or 12 incidents of
11 reduplication of tapes?

12 A Yes.

13 Q Did those reduplication of tapes occur prior
14 to July 29th or subsequent to July 29th?

15 A Prior to.

16 Q So there was no delay after July 29th due to re-
17 duplication, right?

18 A For reduplication?

19 Q Correct.

20 A No, I don't believe there was.

21 Q And the pen register situation you answered I
22 think to Mr. Winograd that that was cleared up prior to
23 the 29th of July, is that correct?

24 A Yes.

25 Q I think you told us on direct examination that

1 rmrf

Bradbury-cross

68

2 you reported for work at approximately 8:00 to 10:00
3 o'clock in the morning during the course of this
4 investigation, is that right?

5 A That is correct.

6 Q And you were the agent in charge of this particular
7 investigation with other agents under you?

8 A That is correct.

9 Q From July 29th to August 6th did you work from
10 8:00 o'clock in the morning to 2:00, 3:00 o'clock the
11 next day, as you worked previously?

12 A Normally until approximately -- normally I would
13 be in before 8:00 during that period of time and then I
14 would leave, oh, probably after 8:30 at sometime and sometimes
15 later.

16 In other words, I wouldn't be home --
17 we were involved in surveillance as well during that time.

18 Q Of other operations --

19 A We were attempting to gather probable cause for
20 an additional affidavit.

21 Q During the time of July and August of '75,
22 this was your primary responsibility, this particular
23 investigation?

24 A That is correct, yes.

25 Q So that from July 29th on you actually had no

1 rmrf

2 other surveillances to conduct but this particular operation,
3 is that correct?

4 A That is correct, this operation, right.

5 Q You yourself during the monitoring period, did
6 you conduct any surveillance on the street or did you stay
7 in FBI headquarters?

8 A I was in the office.

9 Q You were in the office?

10 A Right.

11 Q You had all the rest of your team or parts of
12 your team out on the street?

13 A That is correct.

14 Q So that after July 29th it is fair to say that
15 you had the entire day at your disposal to conduct the
16 duplicating of these 15 to 20 tapes?

17 A If the machine was available, yes.

18 Q Do you have any records showing you what times
19 the machine was not available during that period of time?

20 A No such records are kept.

21 Q And July 30th do you recall whether or not you
22 went to have the tapes duplicated?

23 A I tried to do it as soon as possible following
24 the 29th. Every single day an effort was expended to get
25 these duplicated. I can't answer your question with

1 rmrf

2 respect to each and every day. I can tell you that each
3 and every day an effort was made to duplicate, yes.

4 Q When you say an effort -- how far from the machine
5 was it that your ordinary business was conducted --

6 A Prior to duplication, I would have to get the
7 original tapes where they were locked up and I would have to
8 take them upstairs. This was approximately nine floors.

9 Q Did you check to see if the machine was available
10 before you went to get the tapes?

11 A Usually since I arrived at work on the floor
12 where my desk was, I got the tapes out and went upstairs
13 and saw if the machines were available. It was quicker
14 than going upstairs, coming down to get the tapes, and
15 going back upstairs.

16 Q On a particular day when the machine was not
17 available, would you keep the tapes in your possession,
18 physical possession?

19 A Yes.

20 Q Would you check again --

21 A I would stay right there. If somebody else was
22 utilizing it I would ask him how long he planned on
23 doing it, and especially after the 29th I told him that
24 obviously I needed this machine and depending upon the
25 nature of his things he was working on at that time, I tried

1 rmrf Bradbury-cross 71

2 to get it as much as I possibly could.

3 Q How many hours of actual duplication did you have
4 to have after July 29th in order to complete all 120 tapes?

5 A I can't document the hours.

6 Q Is it fair to say that it is no more than eight
7 days of duplicating?

8 A Certainly it was eight days from the 29th to the
9 6th --

10 Q I'm sorry, eight hours, rather, of actual
11 duplicating time --

12 A No more than eight hours? Sometimes more was
13 expended.

14 Q Than eight hours to duplicate between 15 and 20
15 of these tapes?

16 A The actual tape time on the machine probably was not
17 eight hours. My presence, attempting to get these things
18 duplicated was more than eight hours. It depended on
19 who was using the machine and when I was able to get the tape
20 on it. I can't document tape time --

21 Q How much tape time was there on the machine?

22 A I can't document that. Each one took about 20 to
23 25 minutes to duplicate.

24 Q By the way, listening to the duplicate while you
25 were recording the next tape -- you did that --

rmrf

Bradbury-cross

72

1

2

A Recording?

3

Q While you were duplicating the next tape, you were

4

listening to the one just duplicated to check the accuracy?

5

A If not me, whoever I assigned it to.

6

Q No additional time was expended listening to

7

the duplicate tapes to see if they were accurate?

8

A You had to watch the duplicating machine and

9

when it started to be completed, you had to leave that

10

alone and take care of that and go back and listen.

11

We kept two separate stacks and we did it as quickly

12

as we could.

13

Q Did you also transcribe or take transcripts of these

14

tapes at that time?

15

A No.

16

Q You told us before that you were determining

17

from listening to the tapes whether or not you would

18

have probable cause to get an additional order signed,

19

is that correct?

20

A I said in addition to listening to the duplicates

21

to make sure we had a working copy, we were also working

22

up probable cause for another affidavit.

23

Q From the information you were getting from the

24

tapes?

25

A Not only the tapes, but many other areas of

rmrf

Bradbury-cross

73

investigations.

Q Take the tapes. Did you utilize the tapes at that time while you were duplicating them in order to determine if you had probable cause to get another order?

A Some of them, yes.

Q Did you have to replay those tapes over to hear what was on the tapes to determine if you had the basis of probable cause?

A Most definitely. We had to do some transcriptions.

Q How much time from July 29th to August 6th would you say you spent getting transcriptions of the various tapes to see if you had probable cause?

A Every day. Every pertinent call that I could ascertain, I tried to get transcribed as soon as I possibly could. This was an activity that took place every single day.

Q Is it fair to say that activity delayed the actual duplication of the 15 to 20 tapes you had remaining after July 29th?

A Certainly not. You have to have them duplicated before you can listen to them to transcribe them.

Q You listened to tapes, you told us before, more than once that you intended to duplicate, is that correct?

rmrf

Bradbury-cross

74

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A No. I listened to tapes to make sure we had a good copy. Obviously it was already duplicated and I listened to see if it was a good copy.

Q That is while the new tape is being duplicated?

A That is correct.

Q When did you listen to determine if you had probable cause?

A Later. I assigned them and these guys would have to transcribe them and get working conversations so that they could be put into the affidavit.

Q You didn't transcribe them yourself?

A No. I transcribed maybe a very minute amount of all the transcriptions. I did very little of that.

Q Did you ever work past 8:30 after July 29th, between July 29th and August 6th, 8:30 in the p.m., duplicating any of the tapes?

A Maybe on a couple of occasions. My primary function during those hours was to make sure our physical surveillance activity was following these people at nighttime, where they went to after they left the wire room.

Q You were the only one there to give those directions?

A Where?

Q The only agent available to make sure the other agents were following the people from the wire room?

1 rmrf

2 A Whether or not I was the only one there, I was
3 the one responsible for their activities and I told them what
4 to do, when to do it and to report to me on what was
5 happening.

6 Q These agents are experienced men watching this
7 wire room?

8 A Sure, some of them.

9 Q They work for the FBI?

10 A Sure.

11 Q You have been on surveillance with them before?

12 A Yes.

13 Q They had to stay in constant contact with you after
14 8:30 at night to effect the physical observations of
15 the people from the wire room?

16 MR. ALZUG: Objection as to form, your Honor.

17 THE COURT: You may answer.

18 A The contact that was being maintained between
19 me and the surveillance agents was for the purpose of
20 keeping me apprised of what was happening on the street
21 as well as to give them some direction if they happened
22 to have lost somebody and I would tell them what to do
23 next and where to go and how to do it.

24 Q How many times between July 29th and August 6th
25 did your agents or the agents on your team lost the

rmrf

Bradbury-cross

76

surveillance of particular individuals from that wire room?

A I can't recall.

Q Did it ever happen?

A Oh, sure.

Q What individual was lost in surveillance during that period of time?

A I can't recall, but during the scope of the entire investigation I could give you names of some subjects that were lost.

Q We are talking between July 29th and August 6th.

A I cannot recall during that period of time which specific subject was lost.

Q Or if anybody was lost?

A Yes, I can recall that more than likely Mr. Rizzo was lost.

Q More than likely?

A Yes.

Q On how many occasions?

A During that period of time?

Q July 29th to August 6th.

A I can't recall how many occasions.

MR. RUBENSTEIN: No further questions.

THE COURT: Any other counsel have any questions?

If not, call the next witness.

rmrf

Bradbury-redirect

77

MR. ABZUG: I have a short redirect, your Honor.

REDIRECT EXAMINATION

BY MR. ABZUG:

Q Directing your attention to August 6, 1975, were you advised -- do you know which Judge sealed the tapes on that day, sir?

A I can't recall exactly, but I think it was Judge Palmieri, but I am not sure. I can't remember.

Q Was the authorizing judge on the second order Judge Carter?

A Yes.

Q Do you recall whether or not on August 6, 1975 Judge Carter was the Judge that sealed the tapes made pursuant to his order?

A I don't believe he was.

Q Do you recall why not?

THE COURT: Does this witness have personal knowledge of that?

MR. ABZUG: I am trying to establish that, your Honor.

Q Do you have personal knowledge of that or not?

A Of which Judge sealed the tapes?

THE COURT: Did you present the order for sealing?

THE WITNESS: No, sir.

rmrf

Bradbury=redirect

78

MR. ABZUG: I withdraw the question, your Honor.

Q Directing your attention to August 29th to August 6, 1975, were there occasions during that time period when you presented the tapes or when you attempted to duplicate the tapes but the duplication machine was unavailable?

A Certainly.

Q During that time period did you attempt to duplicate tapes on each individual day?

A Yes.

THE COURT: Didn't the witness testify to this on direct examination and even responded under cross? Why do you have to repeat this? Simply because defense lawyers drag a matter out, do you have to also?

Q Were you aware of any other duplication machines in the Metropolitan New York Area that were available for you to use?

A No, I was not aware of any.

Q Was there any occasion during the course of the monitoring pursuant to Judge Palmieri's order that the old wire room, the use of the old wire room, was discontinued because the conspirators were frightened, that they thought they were being intercepted?

A Would you repeat that?

rmrf

Bradbury-redirect

79

Q Was there occasion through surveillances or conversations you intercepted pursuant to Judge Palmieri's order that the conspirators, that the wire room clerks were moved because they were frightened that the target telephone was being tapped?

A No.

MR. ABZUG: No further questions.

THE COURT: You may step down.

THE COURT: Please call your next witness.

MS. AMBLER: The Government calls Michael Abzug.

M I C H A E L D. A B Z U G, called as a witness

by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. AMBLER:

Q What is your occupation?

A I am a Special Attorney with the United States Department of Justice assigned to the Manhattan Field Office of the Organized Crime and Racketeering Section.

Q How long have you been so employed?

A Since January of 1975, assigned to the Manhattan Office.

Q You are familiar with Government's Exhibit 1, Judge Palmieri's order?

1 rmrf

148a
Abzuq-direct

80

2 A I am.

3 Q Directing your attention to June 23, 1975, what
4 if anything did you do with respect to that order on that
5 date?

6 A On that day I received a telephone call from
7 Special Agent Bradbury in which he gave me the requisite
8 information to file a ten-day report for Judge Palmieri.
9 Judge Palmieri ordered directed that we file periodic
10 reports with him at five-day intervals to advise him
11 of the progress of the electronic surveillance. Special
12 Agent Bradbury on that day advised me that wire communica-
13 tions had been intercepted over the target telephone
14 since June 15th, that surveillances of the old wire room
15 had indicated that it was in continued disuse and we discussed
16 the matter at some length and I told him that he should--
17 based on that information, he should bring the tapes
18 down immediately for sealing.

19 Q Did you make an effort to seal the tapes on the
20 23rd of June?

21 A Yes, I did. What I did is, I told Agent Bradbury
22 that I would call him back in five minutes to tell him
23 when to come down with the tapes. I immediately called
24 Judge Palmieri's chambers and spoke to his law clerk,
25 Lynn Shafflin, and I don't know the spelling of her name,

rmrf

Abzuq-direct

81

1
2 and she told me that the Judge was unavailable for that
3 day. I asked her when he was going to be back and she
4 said the following day, June 24th, and I told her that
5 we would be by on the 24th to offer the tapes for sealing
6 and I further requested that she write me a letter
7 from chambers indicating that the Government had offered
8 the tapes and the 10-day report for sealing on June 23rd,
9 which she did.

10 MS. AMBLER: Mr. Clerk, would you mark these as
11 Government's Exhibits 3 and 4 for identification.

12 (Government's Exhibits 3 and 4 marked for
13 identification.

14 Q Can you identify Government's Exhibit 3, please?

15 A Yes. Government's Exhibit 3 for identification
16 is the application and sealing order signed by Judge
17 Palmieri -- well, it indicates on this date it was June
18 23rd, but I believe that is incorrect, I think that June 23rd
19 was typed in and I don't think that he in fact signed
20 it until June 24, 1975. This was the order that I
21 submitted to him on the 24th which I signed and he signed
22 as well.

23 Q Can you identify Government's Exhibit 4?

24 A Yes. Government's Exhibit 4 is the ten-day report
25 that I also attempted to offer to Judge Palmieri on the

xx

1 rmrf

Abzuq-direct

82

2 23rd and it basically sets forth the facts that Bradbury
3 communicated to me about the disuse of the target
4 telephones.

5 MS. AMBLER: Mr. Clerk, would you mark this
6 envelope as Government's Exhibit 5 for identification.

7 (Government's Exhibit 5 marked for
8 identification.)

9 Q Can you identify Government's Exhibit 5 for
10 identification?

11 A Yes. Government's Exhibit 5 for identification
12 is the sealing envelope that was used to seal the
13 application and sealing order signed by Judge Palmieri --

14 Q Does that reflect the date on which it was signed
15 by Judge Plamieri?

16 A Well, Judge Palmieri signed it outside of this
17 envelope on June 24, 1973, and I see also that it was filed
18 on June 24, 1975 at 4:03 p.m.

19 MS. AMBLER: Your Honor, the Government offers
20 Exhibits 3, 4 and 5 for identification into evidence.

21 MR. WINOGRAD: May I see No. 3, your Honor?

22 (Pause.)

23 MR. WINOGRAD: No objection.

24 (Government's Exhibits 3, 4 and 5 received
25 in evidence.)

rmrf

Abzuq-direct

83

Q Mr. Abzuq, you are also familiar --

THE COURT: Won't you give me a chance to read these, please?

(Pause.)

Q Mr. Abzuq, are you also familiar with Government's Exhibit 2 which is Judge Carter's order?

A Yes, I am.

Q Did there come a time when you effected the sealing of the tapes under this order?

A Yes. On August 6, 1975, I attempted to call -- I did call Judge Carter's chambers to advise him we were ready for sealing, and I was advised that Judge Carter was on vacation and wouldn't be back for some time. That in my mind distinguished it from the situation where the authorizing Judge, Judge Palmieri, would be back on one day. What I decided to do was take it before the Part I Judge, who at that time was District Judge Charles E. Stewart, and ask him to seal up the tapes rather than the authorizing Judge, Judge Carter.

(Government's Exhibit 6 marked for identification.)

Q Can you identify Government's Exhibit 6?

A Yes. Government's Exhibit 6 is the application and seal order that I submitted to Judge Stewart, sealing

xx

rmrf

Abzug-direct

84

the 120 tapes that were made pursuant to Judge Carter's order signed on July 10, 1975.

MS. AMBLER: The Government offers 6 for identification.

MR. WINOGRAD: May I see it, please?

(Pause.)

MR. WINOGRAD: No objection.

(Government's Exhibit 6 received in evidence.)

Q To go back to the first wiretap order signed by Judge Palmieri, during the period of time from June 11, 1975 to June 23, 1975, at any time did Judge Palmieri ever direct you to terminate surveillance under that order?

A No, he did not.

MS. AMBLER: The Government has no further questions.

THE COURT: Cross examine.

CROSS EXAMINATION

BY MR. KORNBERG:

Q An order was obtained from Judge Palmieri and surveillance began on June 11th, is that correct, surveillance pursuant to that order --

A Electronic surveillance began June 11th pursuant

rmrf

Abzug-cross

85

1
2 to that order.

3 Q Did you subsequently have a conversation with
4 Special Agent Bradbury?

5 A I had many conversations with him.

6 Q Did you talk to him on or about June 14, 1975?

7 A I may have. I don't recall specifically.

8 Q On or about June 14, 1975 did Agent Bradbury
9 advise you that the number was going to be changed or
10 the two numbers for which you had an order was going to
11 be changed, yes or no?

12 A No, I believe the date of the conversation
13 was June 15th, when we had that conversation.

14 Q Did you render a five-day report to Judge
15 Palmieri pursuant to his order?

16 A Yes, I did.

17 Q Did you advise the Judge on or about June 15th
18 that the numbers were going to be changed in your
19 five-day report?

20 A No, I didn't, because the five-day report was
21 for the days June 11th through June 15th.

22 Q In any event, you found out on June 15th that ✓
23 the number was going to be changed, is that correct?

24 A That is correct.

25 Q And you heard Agent Bradbury testify that he

1 rmrf

Abzug-cross

86

2 found out on June 14th the numbers were going to be changed?

3 A Correct.

4 Q Are you telling us that you definitely recall
5 Agent Bradbury did not tell you on June 14th that he
6 has information both from the informant as well as
7 through the electronic surveillance that the numbers were
8 going to be changed?

9 * A I don't have any definite recollection. I am not
10 sure, but I believe the 14th was a Sunday. In any event,
11 I don't --

12 Q You were not told until the 15th?

13 A I know I was told on the 15th. I am not sure
14 whether I was told before then.

15 Q After he told you that the numbers were going
16 to be changed, did you also have a conversation with
17 him with reference to keeping the electronic surveillance
18 on those two telephones?

19 A Yes.

20 Q What did you say to him with reference to keeping
21 the surveillance on those two telephones?

22 A Yes.

23 Q What did you say to him with reference to keeping
24 the surveillance on those numbers?

25 A Well, he told me on the 15th basically that

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

rmrf

Abzug-cross

87

they had received information over the wire that the numbers were going to be changed and I -- excuse me, I have to correct my testimony -- the conversation that we had was not on the 15th, it was on the 17th. I'm sorry.

Q You are now telling us the first time you learned on June 17th that Bradbury found out on the 14th that the numbers were going to be changed?

A Correct, to my recollection.

Q What did you say to him, what did he say to you in that conversation?

A He told me over the wire they had received indications that the numbers were going to be changed and we had a conversation basically about what we should do, whether we should terminate the order immediately or whether we should go forward and wait and see what developed.

Mr. Bradbury told me that in his judgment, based on his experience, it was possible that notwithstanding the number change that the old wire room, the wire room on Second Avenue for which Judge Palmieri had authorized electronic surveillance, might be continued to be utilized, and he enumerated a number of reasons why essentially -- essentially one of the reasons was that

rmrf

Abzug-cross

88

1 operations customarily leave a wire room clerk behind
2 to disseminate the new wire room number and to collect
3 old business, that Mr. Esposito, who was the street
4 boss, I guess, of the operation, might go back to the
5 old wire room to make confidential calls, and this was
6 particularly possible due to the physical proximity of
7 the wire rooms, they were only about a block and a half
8 apart, and, finally, it was possible that because of
9 telephone difficulties or some other difficulties at
10 the new wire room they might have to move back to the
11 old wire room temporarily for a couple of days.

13 I told him that on the basis of that, what
14 I wanted done was to have the new and old wire room
15 under surveillance to determine basically, one, if the
16 old wire room was going to be utilized during the following
17 week and, two, if the move turned out to be permanent
18 we would have probable cause to go in on the new wire
19 room and we agreed that the monitoring procedures,
20 in light of the change in numbers, should be changed
21 slightly, that is, rather than having two agents up
22 in the monitoring room with the earphones on during
23 the period of authorization, those two agents should
24 be freed up to begin transcription and begin doing
25 surveillances but Bradbury should remain on standby with

rmrf

Abzug-cross

89

another agent so that if it was determined the old wire room was being utilized, Mr. Bradbury would be able to reinstitute surveillance immediately.

Q That was the sum and substance of your conversation on June 17th?

A That is correct.

Q Well, he told you that the wiretap or he had information through the informant that the room was going to move as of the 16th and acquired this information on the 14th, is that correct?

A He told me the wire room was going to be moving effective Monday, which I think was the 17th.

Q No, Monday is not the 17th. He told you, and you heard him testify before, that the wire room was going to move -- that he acquired the information on the 14th and all new bets, so to speak would come in and start on the new number on the 16th.

In your conversation on the 17th did he tell you, A, that the surveillance on the 16th showed nobody going into the old room? Yes or no.

A I believe he did.

Q Did he also tell you that on the 16th not one telephone call was recorded with respect to the old room, either incoming or outgoing? Did he also tell you that?

1 rmrf

Abzug-cross

90

2 A I think so.

3 Q Did he also tell you on the 17th the extent of
4 his expertise with respect to how many times he knew of
5 with respect to people going back to an old wire room?
6 Did he tell you that, yes or no?

7 A We didn't discuss it in specific terms. I
8 knew --

9 Q Did you know then that his only expertise was
10 that he had, with respect to his own observations or
11 his own prior dealings in the FBI -- that he only dealt
12 with no more than three to five wire rooms?

13 A I didn't ask him --

14 MS. AMBLER: Objection, your Honor. It is
15 argumentative.

16 THE COURT: He may answer.

17 A I didn't voir dire him on his qualifications
18 as an FBI agent in the telephone call.

19 Q So you just relied upon him as being an FBI
20 agent?

21 A No. I relied upon his expertise and judgment
22 which I found in the course of the investigation which
23 up to that time had lasted seven or eight months that
24 he was a very good agent and I had implicit faith in
25 him, extremely conscientious.

rmrf

Abzug-cross

91

1
2 Q In any event, he told you this on the 17th?

3 A Correct.

4 Q Approximately what time did that conversation
5 take place?

6 A Approximately 10:30 in the morning.

7 Q Did you ask him to report back to you on the
8 17th whether or not there were any bets made to the old
9 wire room?

10 A No, I didn't specifically ask him to report back
11 to me. It was our practice, though, since he was the
12 supervising case agent and I was the supervising
13 attorney, that periodically, at least once every other
14 day and sometimes as much as twice a day he would report
15 back to me and tell me how the wire was progressing.

16 Q Did he tell you on the 17th how the wire was
17 progressing with respect to the old wire room?

18 A I don't recall.

19 Q How about the 18th?

20 A I don't recall.

21 Q Did he tell you on the 18th there was nothing
22 going in and out of the old room?

23 A It is very probable. I don't recall. Why don't
24 he shorten this up --

25 THE COURT: Now, let him do it his way.

rmrf

Abzug-cross

92

1 Trying to save time is something beyond the ken of
2 most lawyers.
3

4 A It is possible.

5 Q When did you speak to him with respect to taking
6 off the wiretap?

7 A On the 23rd.

8 Q Prior to the 23rd, did you have any information
9 relative to the room not operating, the old room not
10 operating, from Bradbury, and if so, when did you
11 receive that information?

12 A I don't recall when. I am quite sure I did.
13 I don't recall specifically when. In my judgment, in my
14 recollection, I say between the date of the conversation
15 I had with him on the 17th and the 23rd when we
16 ultimately decided the investigative objectives of Judge
17 Palmieri's order could not be reached, I would estimate
18 we had as many as three to four phone calls where I would
19 ask him to call me up and I would say, "How is the wire
20 going?"

21 And he would say, "We still don't have anything
22 over the old wire room tap and they are still going in
23 the new wire room."

24 Q You were able to record between 6/11 and 6/15?

25 A Correct.

rmrf

Abzug-cross

93

Q And from 6/16 to 6/23 there were no recordings made?

A That is correct.

Q From 6/23 to 6/25 what was done with the tapes, do you know?

A Yes. On June 23rd -- 6/23 -- June 23rd the tapes were in the custody of Mr. Bradbury. I told him not to bring them down because Judge Palmieri was not available. On June 24th Mr. Bradbury brought the box down with the tapes, the chain-of-custody forms, to Judge Palmieri's chambers where they were sealed.

On the 25th the original tapes were under seal and in the custody of Special Agent Bradbury.

Q If you will, tell me where the tapes were between 6/19 and 6/23, what was being done with respect to those tapes, if you know?

A 6/19?

Q Or 6/18 -- I'm sorry, between 6/16 --

A Between 6/16 -- the original tapes?

Q On 6/15, the recordings ceased and surveillance continued, electronic, continued on the 15th, 16th, 17th and 18th, is that correct?

A No.

Q With no fruition?

rmrf

Abzug-cross

94

1
2 A That is not correct.

3 Q What happened between the 15th and the 23rd?

4 A With respect to what?

5 Q The tapes.

6 A Original tapes?

7 Q Yes.

8 A What happened with the original tapes was that
9 they were, to my knowledge, in the evidence locker under
10 Special Agent Bradbury's care. They had already been
11 duplicated because we had simultaneous duplication and
12 they were waiting until he and I had made a judgment that
13 the investigative objectives of Judge Palmieri's order
14 could not be met and we made that determination on June
15 23rd and offered them for sealing immediately.

16 Q So the judgment with respect to whether or not
17 the room was operating or continued to operate was made
18 on June 23rd?

19 A The judgment that the investigative objective
20 stated in Judge Palmieri's order could not be met by
21 continuing to have Special Agent Bradbury and another
22 agent stand by to monitor was made June 23rd.

23 Q There were no judgments made between the 15th
24 and the last recorded conversation, on the 23rd, that
25 the objectives had already been reached, is that correct?

1 rmrf

Abzug-cross

95

2 A I am not sure I understand your question.

3 Q It took you eight days to decide that the
4 objectives were reached on the 15th, is that correct?5 A Right. Basically what it was is that I decided
6 that -- it was a dual decision -- on the 23rd I decided
7 the investigative objectives of Judge Palmieri's order could
8 not be reached. I also decided that the probable cause
9 for interception, even if Esposito were seen to go back
10 in on the 23rd or 24th had lapsed, become stale, and
11 I didn't feel in good faith we could continue to monitor
12 after the 23rd.

13 Q It took eight days to make that decision?

14 A In any judgment, yes.

15 Q With no recording or surveillance during that
16 eight days?

17 A Correct.

18 MR. KORNBERG: No further questions.

19 THE COURT: Anybody else want to question?

20 MR. RUBENSTEIN: Yes, your Honor.

21 CROSS EXAMINATION

22 BY MR. RUBENSTEIN:

23 Q As to the second order, did you have a conversation
24 with Agent Bradbury after July 29, 1975?

25 A I had many conversations with Agent Bradbury

1 rmrf

Abzug-cross

96

2 after July 29th.

3 Q Did you tell him that -- as of July 29th
4 were you aware of the fact there were 15 or 20 tapes
5 not duplicated?

6 A I don't recall if I was aware of the exact number.
7 I was aware some original tapes had not been duplicated.

8 Q Did you tell Bradbury at that time that it was
9 of utmost importance that the duplication be completed?

10 A Yes. I don't recall exactly when, but towards
11 the end of the wire I called to remind him that we had
12 to get the tapes sealed up at the expiration of the
13 wire and he told me they were experiencing problems
14 duplicating and I told him to get it done immediately,
15 as soon as he possibly could do it.

16 Q Did you tell him it was a top priority thing
17 to get these tapes duplicated?

18 A I told him what I just told you.

19 Q Did he keep in contact with you on a daily
20 basis after July 29th or August 6th to advise you how
21 the duplicating was going?

22 A No, I don't think so.

23 Q Were you aware of the fact he was making certain
24 transcriptions and trying to determine from the tapes
25 as to whether or not there was probable cause for other

rmrf

Abzug-cross

97

affidavits?

A No, I wasn't aware of that fact. It was my impression that the transcriptions were being done by other agents from the duplicates.

Q Did you ever tell him if he had to to work until 12:00 o'clock or work until 12:00 o'clock at night to get the tapes duplicated?

A No. Basically I left it to his discretion. Agent Bradbury is not lazy, is a very hard worker --

MR. RUBENSTEIN: I move that be stricken, your Honor.

THE COURT: Motion denied.

A And i further felt that since he was working perhaps 12 to 14 hours a day that it would be unfair of me to ask him to work 16 to 18 to complete the duplication.

MR. RUBENSTEIN: No further questions, your Honor.

THE COURT: Any other counsel?

MR. GREENBERG: Yes, your Honor, just briefly.

CROSS EXAMINATION

BY MR. GREENBERG:

Q Were Judge Palmieri's tapes ever unsealed pursuant to court order from the time they were sealed until now?

rmrf

Abzug-cross

98

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A No.

Q As to the second group of tapes, at the time on the 29th of July, when the observations were discontinued and the recordings discontinued, were you aware of the fact that the law allowed tapes which were sealed to be unsealed for the purposes of duplication?

A Yes, I was.

Q Had you ever as an Assistant United States Attorney ever made such an application?

A I am not an Assistant United States Attorney, but I never made such an application.

Q You were aware of this procedure?

A Yes.

Q Did you ever discuss it with Agent Bradbury?

A No.

Q With the 29th and the 30th of July and when you began to get into August, did you have any further conversation with Agent Bradbury as to the problem which may arise legally by the fact that these tapes were not being sealed timely?

A I didn't think it was necessary since I had impressed upon him towards the end of the wire he should get it done as quickly as possible.

Q You knew that approximately 80 per cent of the

1 rmrf

Abzug-cross

99

2 tapes were officially duplicated, is that correct?

3 A We didn't discuss it in terms of numbers of tapes
4 left to be duplicated. Basically, the way the discussion
5 went was I called him and told him "We have to get these
6 things duplicated," and he said they were having problems
7 and I said, "How long is it going to take you because
8 we have to get these things sealed up?"

9 He said he didn't know, a few days, and I said
10 to get it done as quickly as possible.

11 Q Did you ever follow up? You were aware of the
12 decisions that had come down from the Federal Courts,
13 I am sure, about the need for the word "immediate"
14 meaning immediate? Were you aware of that?

15 A I didn't need a Federal Court to tell me that
16 and the statute says, "immediate," and if you are
17 referring to Gigante --

18 Q I am not referring to that. I am referring to the
19 cases that had come down where there was an issue as to
20 whether the word "immediate" meant immediate. Were you
21 aware of this?

22 A Why don't you tell me the name of the case
23 and I can tell you whether I was aware of it?

24 Q The point is, it is your state of mind on
25

1 rmrf

Abzug-cross

100

2 July 29, 1975 I am concerned about. As far as you were
3 concerned, in your relationship with Bradbury and
4 relationship to the 120 tapes that have just been taken
5 from this wiretap, your concern was not with
6 "immediate" meaning immediate at that particular time?

7 A That is not true at all.

8 Q "Immediate" meant to you as far as Bradbury
9 could record them?

10 A No, immediate meant to me immediate, unless there
11 was a satisfactory explanation why they could not be
12 sealed at the termination of the order.

13 Q You were to determine the explanation?

14 A No, that is for Judge Weinfeld to do that.

15 Q You were also to determine the satisfaction of
16 the explanation in spite of the fact you knew they could
17 be sealed immediately and unsealed for recording
18 immediately thereafter? You knew that, did you not?

19 A I knew that there was a procedure whereby sealed
20 tapes could be unsealed for purposes of duplication.

21 MR. GREENBERG: No further questions.

22 THE COURT: Any other counsel desire to question
23 the witness? You may step down.

24 (Witness excused.)

25 THE COURT: Any other witnesses?

1 rmrf

2 MR. ABZUG: No, your Honor. The Government will
3 conclude its presentation -- we have a stipulation I
4 would like to read into evidence, but I don't think all
5 counsel present have had an opportunity to take a look
6 at it. I ask the Court's indulgence for perhaps one
7 minute so that they may examine it.

8 THE COURT: Show it to counsel.

9 We will take a short recess.

10 (Recess.)

11 MR. ABZUG: Your Honor, I have a stipulation
12 that has been entered into with the Government by all
13 counsel present marked for identification as Government's
14 Exhibit 7 that I would like to offer into evidence.

15 (Government's Exhibit 7 received in evidence.)

16 MR. ABZUG: Would you like this read into the
17 record, your Honor?

18 THE COURT: Yes.

19 MR. ABZUG: "United States District Court,
20 Southern District of New York, United States versus
21 Richard Esposito, et al., defendants. Stipulation 76 Cr.
22 1076.

23 "It is hereby stipulated and agreed by and
24 between the United States of America by Robert B. Fiske, Jr.,
25 United States Attorney for the Southern District of New York,

xx

1 rmrf

2 by Michael D. Abzug, Special Attorney, United States
3 Department of Justice, of counsel and the defendants
4 Nicholal Botta by his attorney Marvin Kornberg, Esq.;
5 Lawrence Messina by his attorney Ronald Rubenstein, Esq.;
6 Louis Maggio by his attorney Robert Ellis, Esq.; Nicholas
7 Renna by his attorney Frank Lopez, Esq.; Joseph Falco
8 by his attorney Daniel Crupain, Esq.; John Iannone by
9 his attorney Stephen Laifer, Esq.; Irving Albahari by
10 his attorney Leonard Eisenberg, Esq.; Richard Rizzo by
11 his attorney Harvey Greenberg, Esq.; David Steinberg by
12 his attorney Joel Winograd, Esq.; Richard Esposito by
13 his attorney Edward Panzer, Esq.; and John Yarmosh by
14 his attorney Harold Baer, Jr., Esq., that:

15 "1. If Special Agent of the Federal Bureau of
16 Investigation William Bradbury, Jr., were subpoenaed
17 to testify, he would testify that he was the Special Agent
18 charged with the responsibility of supervising the
19 execution of an Order signed by District Judge Edmund
20 L. Palmieri on June 11, 1975, which authorized electronic
21 interception of wire communications to and from the
22 telephone lines numbered (212)860-0702 and (212)860-0704,
23 and an Order signed by District Judge Robert L. Carter
24 on July 10, 1975 which authorized electronic interception
25 of wire communications to and from the telephone lines

rmrf

numbered (212) 289-2547, (212) 289-2579, (212) 686-2299, (212) 686-2138, (212) 348-9822 and (212) 831-9 09; that the following Special Agents of the Federal Bureau of Investigation were assigned to monitor and tape record wire communications pursuant to these Orders: James C. Beane, Nicholas Gianturco, Joseph Fanning; Jea E. Riley; A. Robert Walsh; Martin Builder; Sean P. Hilly; J seph P. Mullen, James K. Kallstrom; Martin C. Coyne, P atrick Collins; James V. Dowd; Richard A. Nalley; Sel on Humphreys; Edward Watt, Thomas French and William Bradbur ', Jr., that immediately at the end of each monitoring day, the monitoring Special Agent gave him the original tape-recorded conversations; that from the time of his receipt of those recordings from the above-named Special Agents (totaling twenty-one tapes made pursuant to District Judge Palmieri's Order and one-hundred and twenty tapes made pursuant to District Judge Carter's Order) until the time that they were sealed, they remained in his personal custody or locked in an evidence cabinet to which only he and Special Agent Paul Brana had access and that neither he nor Paul Brana altered or edited them in any way; that from the date of their sealing to the present they have been kept solely and securely in a locked evidence room located at the Manhattan Field Office of the Federal

1 rmrf

2 Bureau of Investigation, 201 East 69th Street, New York,
3 New York, and have not been altered or edited in any way.

4 "2. If the Special agents of the Federal Bureau
5 of Investigation, James C. Beane; Nicholas Gianturco;
6 Joseph Fanning; Jean E. Riley; A. Robert Walsh, Martin
7 Builder; Sean P. Hilly, Joseph P. Mullen, James K.
8 Kallstrom; Martin C. Coyne; Patrick Collins; James V. Dowd;
9 Richard A. Nalley; Seldon Humphreys; Edward Watt, Thomas
10 French and William Bradbury, Jr., were subpoenaed
11 to testify, each would testify that he was assigned to
12 monitor and tape record wire communications to and from
13 the telephone lines numbered (212) 860-0702 and (212) 860-0704
14 pursuant to the June 11, 1975 Order of District Judge
15 Edmund L. Palmieri and to and from telephone lines numbered
16 (212) 289-2547, (212) 289-2579, (212) 686-2299,
17 (212) 686-2138, (212) 348-9822 and (212) 831-9709; that
18 as soon as each completed monitoring and recording for
19 his particular assigned day, he immediately transferred
20 the original tape-recorded conversations to Special Agent
21 William Bradbury, Jr.; that from the time of their making
22 until they were transferred to Special Agent William
23 Bradbury, Jr., the original tape-recorded conversations
24 were not altered or edited in any way."

25 This stipulation is signed by myself on behalf

1 rmrf

2 of Mr. Fiske, sworn by Mr. Kornberg on behalf of Michael
3 Botta, Mr. Rubenstein on behalf of Mr. Messina, Mr.
4 Lopez on behalf of Mr. Renna, Mr. Crupain on behalf of Mr.
5 Falco, Mr. Laifer on behalf of Mr. Iannone, Mr. Eisenberg
6 on behalf of Mr. Albahari, Mr. Greenberg on behalf of Mr.
7 Rizzo, Mr. Winograd on behalf of Mr. Steinberg, Mr. Panzer
8 on behalf of Mr. Esposito and Mr. Baer on behalf of Mr.
9 Yarmosh.

10 THE COURT: Does that complete the Government's
11 proof?

12 MR. ABZUG: Yes, your Honor.

13 THE COURT: Do defendants desire to go forward,
14 offer any evidence?

15 MR. KORNBERG: No, your Honor.

16 MR. WINOGRAD: No, your Honor.

17 THE COURT: The Government and defendants
18 rest?

19 MR. RUBENSTEIN: Yes, your Honor.

20 MR. ABZUG: Yes, your Honor.

21 THE COURT: Anybody want to be heard?

22 MR. RUBENSTEIN: I will be heard, Judge.

23 THE COURT: I will allow any defense counsel
24 in addition to counsel who has just arisen to argue in support
25 of a position but I will limit defendants to a total of 20

1 rmrf

2 minutes, if they think they need that much.

3 MR. RUBENSTEIN: Your Honor, as to the first order
4 which went into effect on July 11th, the purpose of
5 that order was terminated on or about July 15th and I
6 think that in reading United States against Falcone
7 in dissent, adopted by this Court in Gigante, when the
8 purpose of the order terminates, the order terminates, even
9 though the statute provides they have until the expiration
10 period of the order, which would have carried it past
11 the 15th.

12 It is clear from the evidence here there was no
13 realistic purpose in maintaining the order since there
14 was no activity at all in what has been referred to as the
15 first wire room. Therefore, any explanation or attempted
16 explanation that they were waiting for people to come back
17 until July 23rd, people who never did in fact return,
18 is a violation of the Court's authorization to the
19 permissible period of wire tapping and that thereafter
20 the question of the one-day delay I don't take issue with as
21 to the sealing before Judge Palmieri, but I say it should
22 have been brought to Judge Palmieri's attention prior to the
23 24th and that in addition thereto he should have been
24 apprised of the five-day order of what had transpired
25 in the first wire room.

rmrf

The burden is upon the Government once there is no immediacy requirement to show a satisfactory explanation, respectfully, Judge, as I understand the statute and the cases thereunder.

As to the second order, the order that was sealed by Judge Stewart on August 6th, it is apparent and clear that the activities by the Government in intercepting communications ended July 29th and that there is no satisfactory explanation as to the delay in the sealing.

As was brought out, there are ample provisions in the statute for duplication to take place subsequent to the sealing. The only case which suggests a satisfactory explanation is the Poeta case, where the state agents were not aware of the fact that you could bring the sealing before a Judge other than the Judge who signed the original order.

We are not confronted with that situation, and Falcone provides that police delay is not a satisfactory explanation. They could have used other recorders to record on the telephone as a backup system if they wanted to, even if their duplicating equipment was not available to them because they had four intercepts to be confronted with, and there was testimony that there were at least ten other machines available and I am sure there are extensions in the FBI headquarters and they could have

1 rmrf

2 easily had a second tape running.

3 I am confident that if there was a malfunction
4 of the recording devices they were using, they would have
5 had another machine as soon as possible to insure that they
6 did not have a break in their electronic surveillance,
7 and I think that the eight-day period, the hiatus between
8 the intercept and the sealing is violative of the statute
9 requirement for immediacy.

10 THE COURT: Anybody else wish to be heard on
11 behalf of a defendant? Does the Government desire to be
12 heard?

13 MR. CRUPAIN: If I may, your Honor, Daniel Crupain,
14 on behalf of Joseph Falco.

15 I would like to point out to the Court that I
16 submit if it is determined by your Honor that the order
17 in fact did expire on the 15th of June, no explanation
18 has been offered by the Government as to why there was a
19 delay between the 15th of June and the 24th of June. The
20 only evidence offered by the Government was to the effect
21 that they were attempting to impart to this Court their
22 interpretation of why the order did not expire, if your
23 Honor follows what I am saying.

24 In other words, I am saying no explanation was
25 offered by the Government if we conclude that the order

1 rmrf

2 did in fact expire or reach its objective on the 15th; the
3 only evidence offered went to what the expiration date
4 was.

5 THE COURT: I will hear you, Mr. Abzug.

6 MR. ABZUG: Your Honor, I would like to address
7 my first brief remarks to the sealing of Judge Palmieri's
8 order.

9 As your Honor is aware, Section 2518-A provides
10 that at the expiration of the order tapes should be
11 immediately sealed unless there is a satisfactory explana-
12 tion. So really the issue of controversy is when the
13 order expired. Judge Palmieri's order, by its terms, expired
14 after one of two things happened, after 20 days had
15 elapsed which imposed the sealing on the Government which
16 begins on July 1, 1975, and we are clearly within that
17 period, or when the stated objective of the authorization
18 should be achieved.

19 I submit, your Honor, that it is obvious that
20 the stated objective -- that the order doesn't terminate
21 as soon as wire communications cease to be intercepted
22 over the target telephones, as I think Mr. Rubenstein
23 suggested, because were that so, if there were a hiatus of
24 as little as 15 or 20 minutes, the defendants could argue
25 that then there was an obligation to seal and everything
intercepted after that brief 15 or 20 minute hiatus was

1 rmrf

2 improperly intercepted.

3 The statute doesn't say that. Rather, wisely, the
4 statute says the order should terminate when the stated
5 objectives of the order could be achieved.

6 An argument could be made that the stated objectives
7 of this order never were achieved and that therefore the
8 sealing obligation wasn't imposed until July 1st. This is
9 not a situation where the objectives of the order were
10 achieved, rather it is a situation where it became apparent
11 to the Government that the objectives stated in the order
12 could not be achieved.

13 Based on that alternative argument, I think it is
14 quite clear that the Government's determination that on
15 June 23rd the stated objectives of Judge Palmieri's order
16 could not be achieved has been unrebutted in this hearing
17 and I submit to your Honor that that determination should
18 only be second-guessed or again said in one or two
19 situations, either where the determination has been made in
20 bad faith, and there is no indication of that, or the
21 facts adduced at a hearing show the determination was
22 clearly unreasonable or unwise and I don't think that such
23 facts have been adduced at this hearing.

24 Mr. Bradbury has indicated in some detail
25 why in his judgment it was not a good idea or was not

1 rmrf 111

2 necessary for the Government to terminate the order on
3 June 15th when the electronic surveillance stopped.

4 He mentioned that in his experience that quite often
5 the wire room when it moves from an old location to a new
6 location will let a clerk stay behind at the old location
7 to give out the new number or any latecomers or to take
8 in old action that had not got the new numbers or perhaps
9 Mr. Esposito, the street boss of this operation, might
10 go back to the old room to make confidential calls and
11 the operation could have even have telephone difficulty
12 at the new location and moved back to the old wire room.

13 It was not until seven days had elapsed when
14 none of this had transpired when I believe the Government
15 should have and in fact did reach a decision that the
16 investigative objectives of Judge Palmieri's order could
17 not be obtained and immediately when we made that
18 determination we offered the tapes for sealing and I think
19 counsel has conceded that the one day delay occasioned by
20 Judge Palmieri's temporary absence is a satisfactory
21 explanation within the meaning of the statute, and I
22 emphasize that it has been stipulated to that none of the
23 tapes in this case have been altered or tampered with in
24 any way.

25 With respect to the second wire, the Government

rmrf

112

1 submits there was a satisfactory explanation.

2
3 Mr. Bradbury -- the record shows there was a dili-
4 gent attempt by Mr. Bradbury and the Government to
5 complete duplication of the 120 tapes by the end of the per-
6 iod authorized by Judge Carter's order consistent with the
7 equipment available to the Government and consistent with
8 Mr. Bradbury's intent to maintain or to minimize the
9 number of people handling the original tape recordings,
10 to keep them in his personal custody while being duplicated
11 and I submit this procedure was occasioned merely by a
12 concern for the objective of the sealing statute, which is
13 to maintain the integrity of the tapes and that was foremost
14 in the Government's mind here.

15 The failure to seal the tapes by the 29th is
16 attributable to the lack of simultaneous duplication
17 equipment by Mr. Bradbury requested but was not available
18 for a variety of reasons, because, first of all, of the
19 number of telephones that were being wiretapped and also
20 because of the vast number of other Title 3s being
21 instituted during that time period.

22 I would like to emphasize that the shortness
23 of the delay in this case stands in stark contrast to
24 the delay in every other federal case that has construed
25 the term "Satisfactory explanation" decided under

1 rmrf

2 Title 18 United States Code Section 2518(8)A. In
3 Gigante there was a delay of eight to 12 months. In
4 Sklaroff, cited on page 7 in the Government's memorandum,
5 a 14-week delay, in Alvarez, which is a case also cited in
6 our brief and a case recently before Judge Owen of this
7 district, an 85-day delay, and in United States versus
8 Falcone, the Third Circuit case at 5 Fed. 2d, page 485,
9 there was a 45-day delay.

10 More importantly, I think the reasons advanced
11 for the delay in this case are much more compelling than
12 those decided by any of the cases I just cited. In Gigante
13 the Second Circuit found it necessary to suppress because
14 of not only the length of days, which was really outrageous,
15 8 to 12 months, but because this explanation of the delay
16 and chain of custody could not be determined, the
17 actual authenticity of the tapes.

18 In Alverex there was an egregious mistake of law
19 by the Assistant supervising the case who thought he had 90
20 days to seal the tapes.

21 In Sklaroff they used the originals to draft
22 search warrants. In Kornauf the delay was occasioned by
23 transcription of originals.

24 In conclusion, your Honor, I think that the
25 closest factual pattern I have been able to find to this case

rmrf

1
2 was discussed in Falcone, by the dissent in Falcone,
3 which was as counsel noted cited with approval by Chief
4 Judge Kaufman in Gigante. There the dissent rejected the
5 Government's explanation that they needed 45 days to compare
6 composit tapes and to transcript from originals which the
7 dissent in that case held 45 days was too long because
8 the Government could have had simultaneous duplication
9 machines set up or that the Government in absence of that
10 equipment could have simultaneously duplicated, using the
11 duplication machine the following day.

12 In this case the Government has offered satisfactory
13 reasons why unfortunately neither of those two alternatives
14 was feasible, although the Government certainly did the
15 best that they could.

16 The availability of other duplication machines, that
17 was not feasible, and that was accounted for. Special
18 Agent Bradbury testified that if they were to use other
19 duplication machines aside from this machine that the tape
20 recording, the subsequent duplicate tape would suffer
21 in quality, be of poor quality and perhaps even necessitate
22 a greater time period since we would have to rerecord.

23 Again, it is distinguishable by the short period
24 of time of delay in this case, that is about seven to eight
25 days, versus the 45-day delay taken in Falcone.

rmrf

115

There has been a suggestion that I think a portion of the tapes should have been sealed and the remaining tapes should have been duplicated and then sealed.

The statute is not clear on this point but the statute indicates, and I am speaking of 2518(8)A.

THE COURT: I thought you said "In conclusion" about four minutes ago? Conclude your argument, please.

MR. ABZUG: The statute indicates that such recording shall be available to the Judge at the conclusion of the order and sealed under his direction. It certainly can be argued that such recordings indicate the recordings, all the recordings that were made pursuant to an order of electronic surveillance and doesn't mandate partial sealing when the partial sealing of all the originals are not available for sealing.

THE COURT: Upon the evidence and the entire record offered on this hearing, the Court finds that there is a satisfactory explanation for the delay in the filing and sealing provisions of 18 USC Section 2528(8)A with respect to the order of Judge Palmieri dated June 11, 1975 and the order of Judge Carter dated July 10, 1973.

Accordingly, the motion to suppress the evidence made on behalf of all defendants is denied.

1 rmrf

116

2 Gentlemen, the trial date, as you know, has
3 been set for February 7th. I will require my counsel
4 who has in mind any voir dire questions to get them to
5 chambers ten days before, and that would be on January
6 27th.

7 Otherwise the trial will go forward on the morning
8 of February 7th at 10:00 o'clock. I will have a panel
9 here that morning and we will proceed promptly.

10 MR. PANZER: Your Honor, I don't want the writ
11 satisfied.

12 THE COURT: Where is he at?

13 MR. ABZUG: He is present in the courtroom today,
14 your Honor.

15 THE COURT: Where is he confined?

16 MR. ABZUG: MCC, your Honor.

17 THE COURT: How long has he been here?

18 THE MARSHAL: I don't know how long --

19 MR. ABZUG: He was writted up about a week ago.

20 THE COURT: Why should he remain here this
21 entire period of time?

22 MR. PANZER: There is going to be an application
23 with respect to him. I expect to enter a plea on his
24 behalf and I am in the process of negotiating that.

25 THE COURT: Then we will keep him here. You

1 rmrf

2 know, this situation where the prosecution and defense
3 agree on the defendant being kept here may be all right
4 as between them but is not satisfactory to the Court. The
5 Court is concerned whether or not a defendant serving
6 a sentence in another matter shouldn't be at his place
7 of confinement.

8 MR. PANZER: That is why I made the application,
9 your Honor.

10 THE COURT: Well, nobody explained to me why you
11 made the application. Why do you adjourn it to March 1st?
12 This is even beyond the trial date.

13 MR. ABZUG: I take responsibility for that, your
14 Honor. I asked that that date be put in.

15 THE COURT: I will make this returnable February
16 7th.

17 MR. PANZER: Could I make an additional
18 application, your Honor? Could we put this down for a
19 plea, if there is going to be a plea, for January 10th?

20 THE COURT: That will not be satisfactory. I
21 won't be here then. I suggest either you do it before
22 January 4th, which I would prefer, if you want to make it
23 January 3rd --

24 MR. PANZER: I won't be here, your Honor.

25 THE COURT: Where?

1 rarf

2 MR. PANZER: Away.

3 THE COURT: Where is away?

4 MR. PANZER: Either Florida or Antigua, whichever
5 I can get.

6 THE COURT: When will you be back?

7 MR. PANZER: January 10th.

8 THE COURT: Make it January 17th. Put it down for
9 January 17th at 2:30 in the afternoon. When are you going
10 away?

11 MR. PANZER: The 30th.

12 THE COURT: If you conclude that before the 30th,
13 I will be here then and you can by telephone call in and
14 fix a time.

15 MR. BAER: Your Honor, I understand motions have
16 been made on behalf of all these defendants. I have only
17 just this morning come into this matter and I wonder
18 if I might have at least a week's time.

19 THE COURT: No. What did I give the other lawyer
20 h until tomorrow afternoon? I have gone over all
21 these matters and you confer with the Assistant right now
22 and to the extent you are not satisfied with what you are
23 getting, I will hear you tomorrow afternoon on my motion
24 calendar without the need for any additional papers other
25 than those served by all the lawyers in the case. That

1 rmrf

2 will save you a lot of paper work and you are experienced
3 enough to argue whatever you want to argue that you
4 think you are entitled to that either other defense counsel
5 have not received or the Government is not willing to give
6 you.

7 MR. LAIFER: May I expect to hear from your Honor
8 in the near future?

9 THE COURT: Probably as soon as my secretary
10 can get out the opinion. There was a reference to a backlog
11 here and the Government only supplies one secretary
12 and that is all I can do, do as much as I can.

13 It will probably be out within the next two or
14 three days.

15 Good day, all.

16 (Adjourned.)
17
18
19
20
21
22
23
24
25

WITNESS INDEX

120

<u>Name</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
William Bradbury, Jr.	4	30	77	
Michael D. Abzug	79	84		

EXHIBIT INDEX

<u>Government</u>	<u>Identification</u>	<u>In Evidence</u>
1	5	6
2	16	17
3, 4	81	82
5	82	82
6	83	84
7		101

I (We) hereby certify that the foregoing
 is a true and accurate transcript, to the best
 of my (our) skill and ability, from my (our)
 stenographic notes of this proceeding.

[Signature]
 Official Court Reporter
 U. S. District Court

Two 2

Service of ~~these~~ copies of

within *Argentina* is

admitted this *16th* day

of *May*, 1977

R. J. Jones ALISA

Attorney for *U.S. of A*